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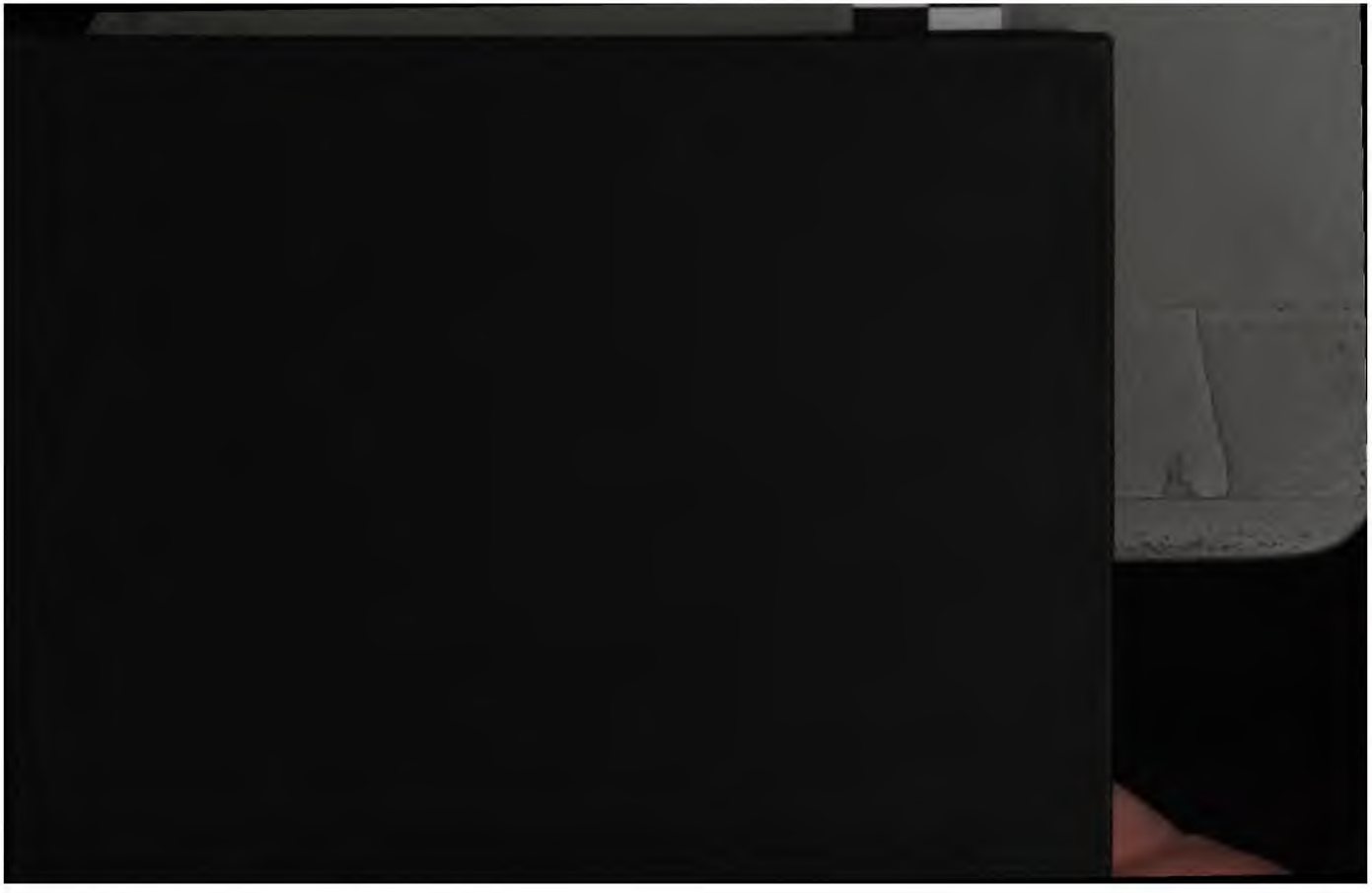

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THE TOWN OFFICER.

A DIGEST

OF THE

Laws of Massachusetts

IN RELATION TO THE

POWERS, DUTIES AND LIABILITIES

OF TOWNS,

AND OF

TOWN OFFICERS;

WITH THE NECESSARY FORMS.

BY BENJAMIN F. THOMAS,
COUNSELLOR AT LAW.

NEW EDITION, REVISED AND CORRECTED.

WORCESTER:
PUBLISHED BY WARREN LAZELL.
1849.

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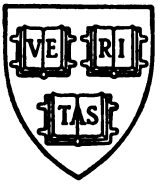

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the same by vote or otherwise; to hold real and personal estate, in trust, for the support of schools, and for the promotion of education, within the limits of the town; to make any contracts, which may be necessary and convenient for the exercise of their corporate powers, and to make any orders for the disposal or use of their corporate property, which they may judge necessary or expedient for the interest of the inhabitants. *Ib.* § 11.

4. Towns shall have power, at any legal meeting, to grant and vote such sums of money as they shall judge necessary for the following purposes, that is to say,

For the support of town schools:

For the support and maintenance of the poor:

For burial grounds; and

For all other *necessary charges* arising within the same town. *Ib.* § 12.

5. It seems very clear that the above statement was not intended to be an enumeration of objects and purposes for which towns may raise money, but the expression of a few leading and prominent objects, by way of instance, and a general reference to others, under the term "other necessary charges." 12 *Pick.* 230. 23 *Pick.* 76.

6. To bring any appropriation within the description of necessary town charges, it must be for the execution of some corporate power, the performance of some corporate duty, or the enjoyment of some corporate right as established by law, or by long usage. 23 *Pick.* 76.

In relation to usage, the Supreme Court remark in the same case, that it is not a casual or occasional exercise of a power, by one or a few towns, which will constitute such a usage; but it must be a usage, reasonable in itself, general among all towns of like situation, as to settlement and population, and of long continuance. 23 *Pick.* 79.

7. Some of these charges, besides those for the support the poor, schools, and for burial grounds, are—

The payment of municipal officers. 13 *Mass.* 279.

The support of such actions as towns may be parties to *Ib.*

The making and repair of townways, causeways and bridges. *R. S. c.* 24, § 68. *C.* 25, § 1.

The making and repair of highways within the town. *Ib. c.* 24, § 73.

The erection and maintenance of guide posts. *Ib. c.* 25, § 28.

The erection of town houses, and market houses, for the use of the town. 13 *Mass.* 274. 23 *Pick.* 71. 5 *Met.* 40.

The erection of alms houses, and work houses. *R. S. c.* 16, § 1.

The erection of hospitals for the reception of persons having diseases dangerous to public health. *Ib. c.* 21, § 35.

The inoculation of inhabitants with the cow pox. *Ib. c.* 21, § 45.

The establishment of a quarantine ground. *Ib. c.* 21, § 27.

Bounties on the destruction of noxious animals. *Ib. c.* 55, § 3.

The maintenance of watch within the town. *Ib. c.* 17, § 7.

Provision for the extinguishment of fires, including the purchase and repair of engines, and other fire apparatus—the compensation of engineers, firewards, and engine men. 19 *Pick.* 485. 3 *Met.* 163.

The construction of reservoirs for water to supply fire engines. 3 *Met.* 163.

The indemnification of owners of buildings destroyed to stop fire in certain cases. *R. S. c.* 18, § 7. 8 *Met.* 462.

The indemnification of its officers against liabilities in-

curred in the *bona fide* discharge of their duties, even though they have exceeded their legal rights and authority. 7 *Pick.* 18. 18 *Pick.* 566.

The equipment of poor soldiers, and other expenses incurred by the discharge of duties imposed on towns by the Militia Laws. *R. S. c.* 12, § 27. *Stat.* 1837, *c.* 240, § 10, 11.

Providing armories for volunteer companies. *Stat.* 1840, *c.* 72, § 20.

The purchase of Hay scales, and Standard weights and Measures. *R. S. c.* 28, § 95. *Ib. c.* 30, § 8.

The maintenance of one or more Pounds. *Ib. c.* 18, § 19.

The support of one or more Public Clocks. 12 *Pick.* 227.

The payment of rewards offered by Selectmen, for securing persons charged with crime. *Stat.* 1840, *c.* 75.

8. Corporations can only exercise their powers over their respective members, for the accomplishment of limited and well defined objects. And a town in its corporate capacity, will not be bound, even by the express vote of the majority, to the performance of contracts, or other legal duties not coming within the scope of the objects and purposes for which they are incorporated. 23 *Pick.* 75. 1 *Met.* 284, 287. 11 *Pick.* 396. 13 *Mass.* 272. 16 *Mass.* 48.

9. To give an illustration of the foregoing rule. A town has no authority to raise money to aid in the construction of a road which by law is to be made at the expense of the County; and, consequently, a tax laid by the town, for the purpose of collecting the money, is illegal and void. 11 *Pick.* 396. *See also* 13 *Mass.* 272.

10. Whenever any city or town shall have voted to raise by taxation, or by pledge of its credit, or to pay over from moneys in its treasury, any sum or sums of money,

for any other purpose, or purposes, than those for which it may have the legal right and power so to do, the Supreme Judicial Court shall have power, upon the suit, or petition, of any inhabitants, not less than ten, of such city, or town, liable to be taxed therein, briefly setting forth the cause of complaint, to hear, and finally determine in equity all such cases; and any justice of said court may, as well in vacation as in term time, issue an injunction, and make all such orders and decrees as may be necessary or proper to restrain or prevent any violation or abuse of said legal right and power of such city or town, until the final determination of such causes by the Supreme Judicial Court; and no order or decree of said court, or of any justice thereof, shall be discharged or invalidated on account of want of jurisdiction in said court or justice. *Stat. of* 1847, *c.* 37.

11. The inhabitants of any town in this Commonwealth, shall have power and authority to make all by-laws that may be necessary to preserve the peace, good order, and internal police of their respective towns: or for directing and managing their prudential affairs, and they may annex suitable penalties, not exceeding twenty dollars for any one breach thereof, to be recovered by complaint, before any justice of the peace for the county, in which the offence may be committed, and to enure to such uses as the town may direct. *R. S. c.* 15, § 13. *Stat. of* 1847, *c.* 166.

12. The by-laws must be approved by the Court of Common Pleas for the county, and must not be repugnant to the laws of the Commonwealth. *Ib.*

13. These by-laws, if reasonable, have as full force as if made by the legislature, and whether reasonable or not, is a question of law for the Court. If unreasonable they are void. 3 *Pick.* 473. 6 *Pick.* 191. 1 *Met.* 135.

14. The by-laws duly made by any town shall be binding upon all persons coming within the limits thereof, as well

as upon the inhabitants of such town. *R. S. c.* 15, *c.* 14.

15. All by-laws made by any town shall be published in one or more news-papers printed in the county where such town is situated. *Ib.* § 15.

16. The city council of any city shall have power and authority to make all by-laws, not inconsistent with the laws of the Commonwealth, that may be necessary to preserve the peace, good order, and internal police of the city, and may annex suitable penalties, not exceeding twenty dollars for any one breach thereof, to be recovered by complaint before any police court in such city, or any justice of the peace in a city where no police court is established. *Stat. of* 1847, *c.* 262.

17. The inhabitants of any town may make such by-laws concerning the licensing, regulating and restraining of dogs, going at large, as they shall deem expedient, and may affix any penalties, not exceeding ten dollars for any breach thereof; providing that no such by-law shall extend to any dog, not owned or kept in such town, and that no person shall be obliged to pay more than two dollars, annually, for any license granted under the provisions of this section. *R. S. c.* 58, § 10.

All money received for the licenses in any town, shall be paid to the Treasurer for the use of the town. *Ib.* § 11.

18. Towns may suspend by vote, in whole, or in part, the operation of the first, second and third sections of the fifty-third chapter of the Revised Statutes in relation to the preservation of certain useful birds. *R. S. c.* 53, § 4.

The vote to suspend must be passed at the annual meeting, and for a term of time not exceeding one year. *Ib.*

19. The other powers and duties of towns will be found under the titles of the officers, on whom their execution devolves.

TOWN MEETINGS.

1. When to be held.
2. Warrant shall issue for all meetings.
3. The same warrant may include two or more meetings.
4. Warrants need not have seal.
5. Contents of warrants.
6. Same subject.
7. Selectmen shall insert in warrants any subject requested by ten voters.
8. If selectmen refuse to call a meeting, one may be called by a justice of the peace.
9. If a major part of the selectmen die, resign, &c., the rest may call meetings.
10. Meetings may be adjourned.
11. Town meetings to be proved by records, unless, &c.
12. The voting of persons not legally authorized, not to vitiate proceedings.
13. At what town meetings moderators shall preside.
14. At what the selectmen.
15. Choice of moderator.
16. His powers and duties.
17. No person shall speak without leave of the moderator.
18. Disorderly conduct in town meetings, how prevented and punished.
19. Moderator may administer oaths of office.
20. Meetings for elections.

1. The annual meeting of each town shall be held in the month of March or April; and other meetings shall be held at such other times as the selectmen shall order. *R. S. c.* 15, § 18.

The annual meeting may be held in the month of February in any town which, at a legal meeting notified therefor, shall vote so to do. *Stat.* 1837, *c.* 52.

That towns may avail themselves of the above provision, a change would seem necessary in the third and fourth sections of chapter third in the Revised Statutes, regulating the return of tax bills by collectors and the making out and posting up of lists of voters by selectmen. *R. S. c.* 3, § 3, and 5.

2. Every town meeting shall be held in pursuance of a warrant under the hands of the selectmen, directed to the constables or some other persons, appointed by the selectmen for that purpose, who shall forthwith notify such meeting, in the manner which shall have been ordered by the by-laws, or by any vote of the town. *R. S. c.* 15, § 19.

Where the warrant was signed by one selectman only, "by order of the selectmen," the meeting was held to be illegal, and its proceedings void. 6 *Met.* 340.

3. The selectmen may, by the same warrant, call two or more distinct town meetings for distinct purposes. *Ib.* § 20.

4. Warrants for town meetings need not have seals annexed to them. *R. S. c.* 15, § 19. 10 *Mass.* 105.

5. The warrant shall express the time and place of the meeting, and the subjects to be there acted upon; and nothing acted upon shall have any legal operation, unless the subject matter thereof shall have been inserted in the warrant for calling the meeting. *R. S. c.* 15, § 21.

6. To render valid a vote of a town granting money for any particular object, it is not necessary that the warrant for the meeting should state specifically, that the inhabitants will be called to act on the question of granting money for that purpose, if the subject to be acted on is distinctly stated, and it is one which will be likely to require a grant of money. 9 *Pick.* 97. 21 *Pick.* 68.

7. The selectmen shall insert in the warrant all subjects, which may, in writing, be requested of them by any ten or more voters of such town. *R. S. c.* 15, § 22.

8. If the selectmen of any town shall unreasonably refuse to call a meeting, any justice of the peace of the county, upon the application of ten or more legal voters of the town, may, if he shall think proper, call such meeting, by a warrant under his hand, directed to the constables of the town, if any there be, and otherwise, to any of the persons applying therefor, directing them to summon the inhabitants qualified to vote in town affairs, to assemble at the time and place and for the purpose expressed in the warrant. *Ib.* § 23.

9. If by reason of death, resignation, or removal from town, a major part of the selectmen originally chosen in

any town shall vacate their office, those who remain in office shall have the same power to call a town meeting, as the whole number first chosen would have had. *Ib.* § 24.

10. Any town meeting may be adjourned from time to time, and to such place, within the town, as the meeting shall determine. *Ib.* § 25.

11. If it appears of record that a town meeting was regularly called and held, and officers chosen, without any objection on account of deficiency in warning, any anterior irregularity provable only by parol, cannot vitiate the choice of any officers had at such meeting. 1 *Pick.* 113.

12. If persons should vote, not legally authorised, without being challenged, it would not vitiate the proceedings. 3 *Pick.* 243.

13. At all the town meetings, except those held for the election of governor, lieutenant governor, senators, representatives in the general court, representatives in Congress, electors of president and vice-president of the United States, and county commissioners, a moderator shall be first chosen. *Ib.* § 26.

14. At all meetings for the election of governor, lieutenant governor, senators, representatives in the general court, representatives in Congress, electors of president and vice-president of the United States, and county commissioners, the selectmen shall preside. *Con. c.* 1, § 2, *art.* 2. *Ib. c.* 2, § 1, *art.* 3. *Ib. c.* 2, § 2, *art.* 1. *R. S. c.* 5, § 6. *Ib. c.* 6, § 3. *Ib.* § 16. *R. S. c.* 14, § 17.

15. During the election of a moderator, the town clerk, if present, shall preside; and if there shall be no town clerk in office, or he shall be absent, the selectmen shall preside; and the town clerk and selectmen, respectively, shall, in such case, have all the powers, and perform all the duties of a moderator. *R. S. c.* 15, § 27.

16. The moderator shall preside in the meetings, for

which he is chosen, and shall regulate the business and proceedings thereof; he shall decide all questions of order, and shall make public declaration of all votes passed; and when any vote so declared by him, shall, immediately upon such declaration, be questioned by seven or more of the voters present, he shall make the vote certain by polling the voters, or dividing the meeting, unless the town shall, by a previous vote, or by their by-laws, have otherwise provided. *Ib.* § 28.

17. No person shall speak in the meeting, before leave first obtained of the moderator, nor while any other person is speaking by his permission; and all persons shall be silent at the request of the moderator. *Ib.* § 29.

18. If any person shall conduct himself in a disorderly manner, and after notice from the moderator shall persist therein, the moderator may order him to withdraw from the meeting, and on his refusal may order the constables or any other persons to take him from the meeting and confine him in some convenient place, until the meeting shall be adjourned; and the person so refusing to withdraw, shall, for such offence, forfeit a sum not exceeding twenty dollars to the use of the town. *Ib.* § 30.

19. The moderator of any town meeting may, in open meeting, administer the oaths of office to any town officers chosen thereat.

20. For provisions in relation to meetings for elections, see title "Elections."

TOWN OFFICERS, AND THEIR ELECTION.

1. What town officers to be chosen.
2. What town officers to be sworn.
3. What town officers to be chosen by written ballots.
4. "Written" includes printing &c.
5. Penalty for neglecting to choose selectmen or assessors.
6. In case of such neglect, commissioners may appoint assessors.
7. Commissioners may appoint assessors, when assessors and selectmen chosen by any town do not serve.
8. Officers to be apointed by selectmen.
9. Town clerks to give notice to persons elected that they may be sworn.
10. Penalty for not taking the oath of office.
11. Town offices vacated by removal from town.
12. Vacancies may be filled by a new choice.
13. No person obliged to serve two years successively in the same office.

1. At the annual meeting, every town shall choose from among the inhabitants, the following town officers, who shall serve during the year, and until others shall be chosen and qualified in their stead, that is to say:

A town clerk, who, if present, shall be sworn to the faithful discharge of his duty, either by the moderator of the meeting, or by any justice of the peace.

Three, five, seven or nine selectmen:

Three or more assessors, and if the town shall deem it expedient, three or more assistant assessors:

Three or more overseers of the poor:

A town treasurer:

A school committee of three, five or seven persons:

One or more surveyors of highways:

Constables, who shall also be collectors of taxes, unless other persons shall be specially chosen collectors:

Tythingmen, unless the town shall vote that it is not expedient to choose the same:

Field drivers:

Fence viewers:

Surveyors of lumber:

Measurers of wood and bark, unless the town shall authorise the selectmen to appoint them:

Sealers of leather, and all other usual town officers. *R. S. c.* 15, § 33.

2. All the town officers, designated by name in the preceding section, except the overseers of the poor, tythingmen and the school committee, shall be sworn to the faithful discharge of the duties of their respective offices. *Ib.*

3. The election of town clerks, selectmen, assessors, school committees and town treasurers, and also of the moderator of the meetings, held for the choice of town officers, shall be by written ballots; and the election of all other town officers shall be in such mode as the meeting shall determine. *R. S. c.* 15, § 34.

4. The word "written," includes printing, engraving, lithographing, or any other mode of representing words and letters. *R. S. c.* 2, § 6.

5. Every town which shall neglect to make choice of selectmen or assessors, shall forfeit a sum not exceeding five hundred nor less than one hundred dollars, as the county commissioners of the county, in which such town is, shall order. *R. S. c.* 15, § 35.

6. In case of such neglect to choose selectmen or assessors, the county commissioners may appoint three or more assessors for such town. *Ib.* § 37.

7. Whenever neither the assessors nor the selectmen, chosen by any town, shall accept the trust, or, having accepted it, shall not perform the duties thereof, the county commissioners may appoint three or more suitable persons, within the county, to be assessors of taxes, for such town; and the assessors so appointed, shall have the like powers, and be subject to the like duties, and receive the like compensation, as assessors chosen by the town. *Ib.* § 36.

8. The selectmen of each town shall, in the month of March or April, annually, appoint the following town officers, unless the inhabitants themselves, at their annual meeting, shall choose them, namely:

One sealer of weights and measures; and any other number, which the inhabitants shall, at their annual meeting, vote to have appointed.

As many measurers of fire-wood and bark, (whose fees shall be also established by the selectmen,) as the inhabitants shall at their annual meeting determine:

The selectmen of every town, which has town scales, for the weighing of hay, shall appoint one or more persons to have the superintendence of the hay scales belonging to their town. *Ib.* 38.

9. After the election or appointment of any town officers, who are required to take an oath of office, the town clerk shall forthwith make out a list, containing the names of all such officers, as shall not have been sworn by the moderator, and a designation of the offices to which they are chosen, and deliver the same, with his warrant, to a constable, requiring him, within three days, to summon each of the officers, so chosen, to appear and take the oath of office, before the town clerk, within seven days after such notice; and the constable shall, within seven days, make return of the warrant to the town clerk. *Ib.* 39.

10. If any person so chosen, and summoned, and not exempted by law from holding the office, to which he is elected, shall not, within seven days, take the oath of office, before the town clerk, he shall, unless the office to which he is chosen shall be that of constable, or some other for which a different penalty is provided, forfeit the sum of five dollars to the use of the town; provided, always, that every such person, who shall take the oath of office, before a justice of the peace, and file a certificate thereof, under the hand of such justice, with the town clerk, within the said space of seven days, shall be exempted from said penalty. *Ib.* 40.

11. Every person, removing from a town in which he

held a town office, shall be deemed thereby to have vacated such office. *Ib.* 41.

12. Whenever there shall be a vacancy in any town office, by reason of non-acceptance, death, removal, insanity or other disability of any person chosen to office, the town may fill such vacancy, by a new choice at any other legal meeting. *Ib.* 42.

13. No person shall be obliged to serve in the same office two years successively. *Ib.* 43.

ASSESSORS.

1. To be chosen by ballot, and sworn.
2. Form of oath.
3. Duties of assistant assessors.
4. To be sworn.
5. Penalty if assessors neglect to take oath.
6. Assessors responsible only for fidelity.
7. Not liable for accidentally assessing person not an inhabitant.
8. Compensation of assessors.
9. Additional allowance.
10. To prepare lists of persons liable to be enrolled in militia.
11. Persons liable.
12. Persons exempt.
13. Penalty for not giving information to.
14. Lists to be returned to town clerks.
15. Other powers and duties of assessors.

1. Assessors are to be chosen by written ballot, and to be sworn. *R. S. c.* 15, § 33, 34.

2. The assessors' oath of office, shall be in substance as follows:

You, being chosen assessors, or an assessor (as the case may be) for the town of , for the year ensuing, do swear, that you will impartially, according to your best skill and judgment, assess and apportion all such taxes, as you may, during that time, be directed to assess, and that you will faithfully discharge all other duties of said office. *R. S. c.* 15, § 55.

3. In all towns, where assistant assessors are or may be chosen, they shall, in their respective wards or districts, assist the assessors, in taking a list of the ratable polls, in

estimating the value of the real and personal estate, in said wards or districts, and in making out lists of persons, qualified to vote at elections in said towns. *Ib.* § 56.

4. Assistant assessors shall be sworn to the faithful discharge of the duties of their office. *Ib.*

5. If any assessor after having notice of his election, shall neglect to take the oath of office, he shall forfeit to the use of his town, a sum not exceeding fifty dollars, to be recovered by indictment. *Ib.* 57.

6. The assessors shall not be responsible for the assessment of any tax, in any town, parish, religious society, or school district, for which they are assessors, when such tax shall have been assessed by them, in pursuance of any vote for that purpose, certified to them by the clerk or other proper officer of such town, parish, religious society or school district; but they shall, in such case, be responsible only for the want of integrity and fidelity on their own part. *R. S. c.* 7, § 44.

7. Under the preceding section, the supreme court has held that assessors, conducting themselves with fidelity and integrity, in assessing a tax in pursuance of a vote, duly certified to them, were not responsible for accidentally assessing a person not an inhabitant of the town, and not liable to be taxed. While acting within their appropriate sphere, they have the same protection and immunities which judicial officers have. 21 *Pick.* 382.

Under the provision of the statute of 1823, *c.* 138, § 5, the decision was otherwise. 4 *Pick.* 399. 15 *Pick.* 44.

8. Each assessor shall be paid by his town the sum of one dollar a day, for every whole day, that he shall be employed in that service, together with such other compensation as the town shall allow. *R. S. c.* 7, § 45.

9. Where a town votes that its assessors shall be allowed a certain gross sum for their service during the year, they are not entitled under the preceding section, to

one dollar a day in addition to the sum thus voted, unless it appears from the terms of the vote, that such was the intention of the town. But they are entitled to the compensation of one dollar a day, although it exceeds the sum voted by the town, and if the sum voted exceeds the statute compensation, they are entitled to such sum. 3 *Mct.* 431.

10. It is the duty of the assessors to prepare annually a list of all persons living within their respective limits liable to be enrolled in the militia. *Stat. of* 1840, *c.* 92, § 3.

11. Every able bodied white male citizen, resident within this Commonwealth, who is or shall be of the age of eighteen years, and under the age of forty-five years, excepting persons enlisted into volunteer companies, persons *absolutely exempted by law*, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime in this or any other State, shall be enrolled in the militia. *Ib.* § 1.

12. The persons absolutely exempted are the vice-president of the United States, the officers, judicial and executive, of the government of the United States, the members of both houses of Congress, and their respective officers, all custom house officers with their clerks, all post-masters, post officers, post riders, and stage drivers who are employed in the care and conveyance of the mail of the United States, all ferry-men, employed at any ferry on the post road, all inspectors of exports, all pilots, and all mariners actually employed in the sea service of any citizen or merchant within the United States.

Justices of the supreme judicial court and court of common pleas.

Judges of the municipal court and of probate.

Registers of probate and of deeds.

Sheriffs.

All officers who have held, or may hereafter hold, commissions in the army or navy of the United States, for the term of five years.

All officers who have held, or may hereafter hold, commissions in the militia in this or any other State of the United States, for the term of five years, or who have been or shall be hereafter superseded and discharged, or who have held, or shall hereafter hold, commissions in any corps, at the time when it is disbanded, and all staff officers, whose offices shall have or may become vacant by the discharge of their commanding officers.

Ministers of the gospel, of every denomination.

The superintendents, other officers, and assistants, employed in or about any department of the Massachusetts general hospital, in Boston and Charlestown, and in the State lunatic hospital at Worcester, during the time of such emplyoment.

The officers and guards employed at the State prison in Charlestown, and in any of the jails and houses of correction in the Commonwealth. *R. S. c.* 12, § 1 & 73.

Persons of the religious denomination of Quakers or Shakers. *Stat. of* 1841, *c.* 106, § 7.

13. Every keeper of any tavern or boarding house, and every master and mistress of any dwelling house, shall upon application of the assessors within whose bounds such house is situated, or of any persons acting under them, give information of the names of all persons residing in such house, and liable to enrollment or to do military duty; and every such person, so liable, shall, upon the like application, give his name and age; and if any such keeper, master, mistress, or person aforesaid, shall refuse to give such information, or shall give information which is false, he or she shall forfeit and pay twenty dollars. *Stat. of* 1840, *c.* 92, § 2. *R. S. c.* 12, § 103.

14. The assessors shall in the month of May annually,

return the list or lists of the names of persons liable to be enrolled, to the town clerk. *Stat. of* 1840, *c.* 92, § 3. *Stat. of* 1843 *c.* 93, § 7.

15. For other powers of assessors, see titles, "assessment of taxes," "collectors," and "collection of taxes," "schools," and "school districts," "surveyors of highways," and "fire departments."

ASSESSMENT OF TAXES.

I. PERSONS AND PROPERTY SUBJECT TO, OR EXEMPTED FROM TAXATION.

1. Poll tax on persons between 20 and 70 years of age.
2. Persons between those ages exempted.
3. This exemption may be waived.
4. Persons over 70 years of age liable to poll tax under Stat. of 1844.
5. Object of Statute.
6. Persons over 70 years of age exempted.
7. All property subject to taxation, except, &c.
8. Real estate.
9. Personal estate.
10. Persons and property exempted—property of the United States, and Commonwealth—Property of certain institutions, if, &c. —Bunker Hill Monument—Household furniture, &c.— Churches, Tombs, Cemeteries—Salaries of U. S. officers—Stocks of U. S.—Cattle, &c.—Indians—Polls and estates of persons unable to pay—Property of School districts.
11. Polls and estates of persons residing on lands ceded to U. S.
12. Property of Western Rail Road Corporation.

1. A poll tax shall be assessed upon every male inhabitant of this Commonwealth, between the ages of *twenty* and *seventy* years, whether a citizen of the United States, or an alien, except persons now exempt by law from taxation. *Stat. of* 1843, *c.* 87.

2. The persons exempted from the poll tax by law, are:

1st. All Indians.

2nd. Those who by reason of age, infirmity and poverty, may, in the judgment of the assessors, be unable to contribute towards the public charges. *R. S. c.* 7, § 1, & 5.

3. This exception was intended as a benefit to those

who by reason of age, infirmity, or poverty are unable to contribute, and one which if they so elect they may waive; and in such case it would not be in the power of the assessors to omit them in the assessment, or abate their taxes against their consent, with a view to affect their elective franchise, or for any other purpose. 11 *Pick.* 543. 5 *Met.* 594.

4. As to persons over seventy years of age, the provision of the statute is as follows: A poll tax shall be assessed upon every male inhabitant of the Commonwealth, above the age of seventy years, excepting *paupers and persons under guardianship*, whether a citizen of the United States, or an alien, in the manner heretofore provided by law. *Stat of* 1844, *c.* 145.

5. This statute seems to have been passed in consequence of the opinion expressed by the Supreme Court to the House of Representatives, "that persons over seventy years of age are no more entitled on that account than any other persons to vote without the actual payment of a tax, though not liable to a poll tax. *See* 5 *Met.* 591.

6. The only classes expressly excepted, are *paupers and persons under guardianship*, neither of which can exercise the elective franchise, whether taxed or not. The word "*pauper*" has a precise technical meaning, designating persons receiving aid and assistance from the public under the provisions made by law for the support and maintenance of the poor. It does not include persons who may be exempted from taxation for their age, infirmity, or poverty, under the discretionary authority given to the assessors. 11 *Pick.* 540.

In relation to the polls of persons over seventy years of age, the Legislature would seem to have left no discretion with the assessors.*

* Such seems to be the necessary conclusion, from the language of the statute of 1844, though the reason of the distinction is not so obvious.

The polls of persons under guardianship, and *under* seventy years, are not exempted from taxation. *R. S. c.* 7, § 5.

7. All property, real and personal, of the inhabitants of this State, not expressly exempted by law, shall be subject to taxation. *R. S. c.* 7, § 2.

8. Real estate shall, for the purposes of taxation, be construed to include all lands within this State, and all buildings and other things erected on, or affixed to the same. *Ib.* § 3.

9. Personal estate shall, for the purposes of taxation, be construed to include all goods, chattels, moneys and effects, wheresoever they may be, all ships and vessels, whether at home or abroad, all moneys at interest, due the persons to be taxed, more than they pay interest for, and all other debts due to them more than they are indebted for, all public stocks and securities, stocks in turnpikes, bridges, and all monied corporations, whether within or without the State, and also income from any profession, trade or employment, or from an annuity, unless the capital of such annuity shall be taxed in this State; and all other property returned in the last preceding valuation, for the purpose of taxation. *Ib.* § 4.

10. The following persons and property are exempt from taxation:

The property of the United States and of the Commonwealth. *R. S. c.* 7, § 5.

The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Commonwealth, and such real estate belonging to such institutions, as shall actually be occupied by them, or by the officers of said institutions, for the purposes for which they were incorporated. *Ib.*

The Bunker Hill Monument. *Ib.*

The household furniture of every person, not exceeding

one thousand dollars in value; and also his wearing apparel, farming utensils, and mechanic's tools necessary for carrying on his business. *Ib.*

All houses of religious worship, and the pews and furniture within the same, (except for parochial purposes.) *Ib.*

Whenever any building is appropriated in part only to the purposes of public worship, and in part to other purposes, the owners of such building shall be taxed for the value of all parts of such building not so appropriated to the purpose of public worship. 1 *Met.* 538. *Stat. of* 1841, *c.* 127.

All tombs, and rights of burial. *R. S. c.* 7, § 5.

Cemeteries owned by corporations duly organized for that purpose. *Stat. of* 1841, *c.* 114, § 7.

The pay, salary, or official emoluments of officers of the United States. 16 *Peters Rep.* 435.

Stocks issued for loans made to the United States. 2 *Peters*, 449.

All mules, horses, and neat cattle less than one year old; and all swine and sheep less than six months old. *R. S. c.* 7, § 5.

The polls and estates of all Indians. *Ib.*

The polls and estates of persons, who by reason of age, infirmity and poverty, may, in the judgment of the assessors, be unable to contribute towards the public charges. *Ib.*

All property belonging to common school districts, the income of which is appropriated to the purposes of education. *Stat. of* 1843, *c.* 85.

11. Persons who live on lands purchased by or ceded to the United States, for navy yards, forts and arsenals, and when there is no other reservation of jurisdiction to the state than that of a right to serve civil and criminal process on such lands, are not liable to be assessed for their polls

and estates to state, county and town taxes in such towns. *Opinion of Judges*, 1 *Met.* 580.

12. The Western Rail Road Corporation are not liable to be taxed for the land not exceeding five rods in width, over which they were authorized to lay out their road, nor for buildings and structures erected by them thereon, if such buildings and structures are reasonably incident to the support of the road or to its proper and convenient use for the carriage of passengers and property—such as houses for the reception of passengers, engine houses, car houses and depots for the convenient reception, preservation and delivery, of merchandize carried on the road. 4 *Met.* 564.

II. WHERE AND TO WHOM PROPERTY SHALL BE ASSESSED.

1. Poll tax assessed where person is *inhabitant*, on the first of May.
2. Construction of the word *inhabitant*.
3. Domicil of taxation.
4. Rules for determining domicil.
5. Poll tax of minors.
6. " Of other persons under guardianship.
7. Persons liable in one town cannot be assessed in another, even if he consent.
8. Ships or vessels or horses used for transportation of passengers, where taxed.
9. Other personal estate with certain exceptions taxable where owner is an inhabitant.
10. Personal property taxable in other places than where owner is an inhabitant, viz: 1. Stock in trade, manufacturing, &c. 2. Machinery employed in manufactures. 3. Horses, &c. kept in towns where owners do not reside:—4. Personal property of persons under guardianship:—5, or held in trust:—6, deposited to accumulate:—7, in hands of executors, &c. undistributed:—8, Property held as a ministerial fund.
11. Personal property mortgaged &c., taxed to holder.
12. Partners may be jointly assessed for joint stock in trade.
13. Real estate where taxed.
14. Mortgaged real estate where taxed.
15. Contribution between landlord and tenant.
16. Water for mill purposes.
17. Real estate of any person deceased, may be assessed to heirs, &c. jointly, until notice given of division: one liable for the whole, with right to contribution.
18. Real estate of persons deceased where title is in dispute.

1. The poll tax shall be assessed upon each taxable person in the town where he shall be an inhabitant on the first of May in each year. *R. S. c.* 7, § 6.

The word "inhabitant," as used in the statutes, may be construed to mean a resident in any city or town. *R. S. c.* 2, § 6.

So in our State constitution, the word *resident* is used as synonymous with *inhabitant*. *See Con. c.* 1, § 2. *Art.* 2, *c.* 1, § 3. *Art.* 4, *c.* 2, § 1. *Art.* 2, *c.* 6, § 2. *Art.* 1, *& Art.* 3*d*, of amendments.

2. Questions of residence, inhabitancy, or domicil (for although not in all respects precisely the same, they are nearly so, and depend upon much the same evidence,) are among the most difficult presented for adjudication in courts of law. To a manual like this, the town officer will not look for a minute and elaborate discussion of the subject. We thought it well to state a few general, well settled rules, the careful application of which will enable him to settle many of the questions that arise. When the facts are complicated and conflicting, his safe course is to resort to legal counsel.

I. That place is the domicil of a person in which his habitation is fixed without any present intention of removing therefrom. 10 *Mass.* 488, 501. *Story's Conflict of Laws*, 41. *Encyc. Am. Domicil.*

By this rule two things must concur to constitute a legal domicil, first, residence, secondly, the intention of making it the home of the party; there must be the *fact* and the *intent*. *Ib.*

II. Every person must have a domicil somewhere. 23 *Pick.* 170.

III. A man can have only one domicil for taxation at one and the same time. *Ib.*

IV. Every person has a domicil of his origin, which he retains till he acquires another. *Ib.* 1 *Met.* 242. *Ib.* 250. 3 *Met.* 199.

V. A new domicil having been acquired is in like manner retained. *Ib.* 10 *Pick.* 77, 98.

VI. A domicil once fixed is not lost by absence for any purpose of a temporary nature with the intention of returning. *Story Con. of Laws*, 42. 1 *Met.* 250. 5 *Pick.* 370. 10 *Pick.* 98.

VII. If a person removes to another place with an intention to make it his permanent residence, it becomes instantaneously his place of domicil. *Story*, 45, 46.

VIII. Residence in a place to produce a change of domicil must be voluntary. If therefore it be by constraint or by arrest or by imprisonment, the antecedent domicil remains. *Story's Con. of Laws*, 46.

IX. The place where a married man's family resides is generally to be deemed his place of domicil. *Story's Con. of Laws*, 45, 46.

5. All minors, liable to taxation, shall be taxed for their polls, in the towns where the parents, masters, or guardians, who have the control of the persons of such minors, may reside; and if any such minors shall have no parents, master or guardian within this state, he shall be personally taxed for his poll, as if he were of full age. *R. S. c.* 7, § 6.

6. The poll tax, of every other person under guardianship, shall be assessed to his guardian, in the town where the guardian is taxed for his own poll. *Ib.*

7. A person liable to be taxed for his poll and personal estate in one town, cannot be legally assessed for them in another, nor if he consent to such assessment is he bound to pay the tax. 12 *Pick.* 7.

8. All ships or vessels, at home or abroad, and all horses employed in stages or other vehicles, for the transportation of persons, shall be taxed to the owners in the towns where they reside. *Stat. of* 1839, *c.* 139, § 2.

9. All other personal estate, whether within or without this State, shall except in the cases enumerated in the following section, be assessed to the owner in the town where

he shall be an inhabitant on the first day of May. *R. S. c.* 7, § 9.

10. The excepted cases, mentioned in the preceding section, are the following, namely:

First. All stocks in trade, including stock employed in the business of manufacturing, or of any of the mechanic arts, in towns within the State, other than where the owners reside, shall be taxed in those towns, if the owners hire or occupy manufactories, stores, shops or wharves therein, whether the said stocks in trade, or the goods, wares and merchandize or other property composing or forming a part of the same, are within said towns on the first day of May, of the year when the tax is made, or elsewhere. *Stat. of* 1839, *c.* 139, § 1.

Secondly. All machinery employed in any branch of manufactures belonging to any person or persons or to any corporation, shall be assessed in the city, town, or place where such machinery may be situated or employed. *R. S. c.* 7, § 10. *Ib. c.* 2, § 6. *St. of* 1837, *c.* 86.

In assessing the stockholders, for their shares in any manufacturing corporation, there shall first be deducted from the value thereof, the value of the machinery and real estate, belonging to such corporation. *R. S. c.* 7, § 10.

Manufacturing corporations are not taxable for their personal property except for their machinery. Such property is to be assessed to the owners of shares in the stock of such corporations. 4 *Met.* 181, 186.

Thirdly. All horses, except those mentioned in the eighth section, mules, neat cattle, sheep and swine, kept throughout the year, in towns other than where the owners reside, shall be assessed to the owners in the towns where they are kept. *R. S. c.* 7, § 10.

Fourthly. All personal property, belonging to minors under guardianship, shall be assessed to the guardian, in the

town where he is an inhabitant; and the personal property of all other persons under guardianship, shall be assessed to the guardian, in the town where the ward is an inhabitant. *Ib.*

Fifthly. All personal property, held in trust by any executor, administrator, or trustee, the income of which is to be paid to any married woman or other person, shall be assessed to the husband of such married woman, or to such other person, respectively, in the town of which he is an inhabitant; but if such married woman, or other person, reside out of the State, the same shall be assessed to said executor, administrator or trustee, in the town where he resides. *Ib.*

Sixthly. Personal property, placed in the hands of any corporation or individual, as an accumulating fund, for the future benefit of heirs or other persons, shall be assessed to the person for whose benefit the same is accumulating, if within the State, otherwise to the person so placing it, or his executors or administrator, until a trustee shall be appointed to take charge of such property, or of the income thereof. *Ib.*

Seventhly. The personal estate of deceased persons, which shall be in the hands of their executors or administrators and not distributed, shall be assessed to the executors and administrators, in the town where the deceased person last dwelt, until they shall give notice to the assessors, that the estate has been distributed and paid over to the parties interested therein. *Ib.*

Eighthly. All property held by any religious society, as a ministerial fund, shall be assessed to the treasurer of such society; and if such property consists of real estate, it shall be taxed in the town where such property lies; and if it consists of personal property, it shall be taxed in the town, where such society usually hold their meetings. *Ib.*

11. When personal property is mortgaged or pledged, it shall for the purposes of taxation, be deemed the property of the party who has the possession. *Ib.* § 11.

12. Partners in mercantile or other business, whether residing in the same or different towns, may be jointly taxed, under their partnership name, in the town where their business is carried on, for all the personal property employed in such business; and if they have their business in two or more towns, they shall be taxed in those several towns, for the proportions of property employed in such towns respectively; and, in case of being so jointly taxed, each partner shall be liable for the whole tax. *Ib.* § 13.

13. All taxes on real estate, shall be assessed in the town where the estate lies, to the person, who shall be either the owner or in possession thereof, on the first day of May. *Ib.* § 7.

14. In cases of mortgaged real estate, the mortgager shall for the purpose of taxation be deemed the owner, until the mortgagee shall take possession, after which the mortgagee shall be deemed the owner. *Ib.*

15. When a tenant, paying rent for real estate shall be taxed therefor, he may retain, out of his rent, the one half of the taxes paid by him; and when a landlord is assessed for such real estate, he may recover the one half of the taxes paid by him and his rent, in the same action against his tenant; unless there be an agreement to the contrary. *Ib.* § 8.

16. Water power, for mill purposes, not used, being merely a capacity of land for a certain mode of improvement, cannot be taxed independently of the land. 22 *Pick* 22.

Where a dam extended across a river, the thread of which was the dividing line between the two towns, but the water power created thereby was applied exclusively

to drive mills situated in one of the towns, it was held that the water power was not subject to taxation in the other town. *Ib.*

17. The undivided real estate of any deceased person may be assessed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the assessors of the division of the estate, and the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective portions thereof when paid by him. *R. S. c.* 7, § 12.

18. Whenever, at the time of assessment of any tax, the right or title to the real estate of any person deceased shall be doubtful or unascertained by reason of any litigation concerning the will of such deceased person, or the validity thereof, the said real estate may be assessed in general terms to the estate of such person deceased; and said tax shall constitute a lien upon the land so assessed, which lien may be enforced by the sale of the same, or any part thereof, in the manner now, by law, provided for enforcing such liens for taxes on real estate. *Stat. of* 1847, *c.* 226.

III. MODE OF ASSESSING TAXES.

1. Assessors to give notice to bring in lists of polls and property.
2. " may verify lists by the oath of the party.
3. " shall make a valuation.
4. " shall receive lists as a true valuation, unless, &c.
5. Assessors shall make an estimate, when lists are not brought in.
6. Such estimate conclusive, unless, &c.
7. State, county and town taxes may be included in one assessment.
8. County tax, how granted and apportioned.
9. Amount of each town how ascertained.
10. State treasurer to send tax warrants to sheriffs, whenever a State tax is to be assessed.
11. Penalty if assessors neglect to obey treasurer's warrant.
12. When assessors neglect, &c., commissioners may appoint.

13. Liability of towns for not choosing assessors, after warrant from treasurer.
14. Rules of assessment, of State tax same as of town and county taxes.
15. County and city taxes in Boston, how assessed.
16. One sixth shall be assessed on polls, provided, &c., the residue on property.
17. Assessors may add five per cent. for convenience of apportionment.
18. Assessors to deposit a copy of the valuation in their office.
19. Contents of the valuation:—1, Inhabitants' estates:—2, non-resident owners' estates.
20. Assessors to prepare tax lists for collectors—form of tax lists.
21. Assessors to commit lists to collectors with warrant.
22. Warrant valid if signed by majority.
23. Contents of warrant—no seal requisite.
24. If no collector, lists, with warrant, to be given to sheriff or his deputy.
25. Constables to be collectors if no collectors are chosen.
26. When warrant is lost, new one may issue.
27. Majority of assessors may act.
28. Omission to tax persons or estate through accident, &c., does not make tax void.
29. Inclusion of persons not liable, does not make void the tax as to others.
30. If an assessment be illegal, the tax may be re-assessed. If once legally assessed, the re-assessment void.
31. Separate real estates belonging to the same owner, to be separately valued and assessed, &c.
32. Tax void, if from the valuation of a preceding year, &c.
33. After assessment has been made and committed for collection, assessors cannot assess any person to make him a voter.
34. Cashiers of banks, and clerks of other corporations, to make returns to assessors of the names of owners of shares, with the number and value of the shares.
35. Penalty for omitting such returns, or making false ones.
36. Penalty for shareholders' fraudulent transfer for purpose of avoiding taxation.
37. If clerks reside out of the State, directors to make returns.
38. School district taxes.

1. Before proceeding to make any assessment, the assessors shall give seasonable notice thereof, to the inhabitants of their respective towns, at any of the meetings, or by posting up in their towns, one or more notifications, in some public place or places, or by some other sufficient manner; and such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal, not exempted from taxation. *R. S. ch.* 7, § 19.

2. The assessors may, in all cases, require any person bringing in such a list, to make oath that the same is true; which oath may be administered by either of the assessors. *Ib.* § 20.

3. The assessors of each town shall, at the time ap-

pointed, make a valuation of all the estates, real and personal, subject to taxation therein. *Ib.* § 21.

4. The assessors shall receive, as the true valuation of the property of each individual, the list, if any, brought in by him according to the provisions of this chapter, unless he shall, on being thereto required by the assessors, refuse to make oath that the same is true. *Ib.* § 22.

In a case not yet reported, the Supreme Court decided that the list is not conclusive upon the assessors as to the appraisement or estimate of value set upon the property, but that it was competent for the assessors, if in their judgment, the property was estimated too low, to set it at a higher rate in the valuation, subject to the revision of the county commissioners. *Inhab'ts of Newburyport, vs. the County Com'rs of Essex.*

5. If any person shall not have brought in such list, the assessors shall ascertain, as nearly as possible, the particulars of his personal estate, and of the real estate in his possession or occupation, as owner or otherwise, and make an estimate thereof, at its just value, according to their best information and belief. *Ib.* § 23.

6. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons, who shall not seasonably have brought in lists of their estates, unless they can show a reasonable excuse for the omission. *Ib.* § 24.

7. The assessors may include, in the same assessment, their state, county, and town taxes, or any two of them, whenever they shall think it convenient. *Ib.* § 25.

8. The county tax is granted by the legislature and apportioned among the towns by the county commissioners, according to the last state valuation. *R. S. c.* 14, § 33.

9. The amount of the county tax to be assessed in each town, will be ascertained from the warrant of the county treasurer.

Yet if the tax be duly granted and apportioned, the as-

sessment of it would be valid, although made without any warrant from the county treasurer. 20 *Pick.* 4, 18.

So with a state tax without warrant from state Treasurer. *Ib.*

10. Whenever a state tax shall be required to be assessed, the treasurer shall send his warrants, for the assessing thereof, to the sheriffs of the several counties, who shall immediately transmit the same to the assessors, to whom they are directed. *R. S. ch.* 7, § 14.

11. If any assessors shall neglect to obey the warrants, received by them from the treasury of the Commonwealth, for the assessing of any tax upon the inhabitants or estates of their town, every one so neglecting, shall forfeit a sum not exceeding two hundred dollars. *Ib.* § 17.

12. When the assessors of any town shall neglect to assess any tax, as mentioned in the preceeding section, the commissioners in the respective counties, shall forthwith appoint other suitable persons, to assess such tax, according to the warrant of the treasurer; and the persons so appointed, shall take the same oath, and perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns. *Ib.* § 18.

13. If any town shall, for five months after receiving a warrant from the treasurer of the Commonwealth, for assessing a state tax, or the warrant, order, or notice from lawful authority, for the apportionment of any county tax, neglect to choose assessors, and to cause the assessment thereof to be certified, as the law requires, the town so neglecting shall be liable to an action of debt, for the recovery of the amount of such tax, at the suit of the treasurer of the state, or of the county respectively. *Ib. ch.* 8, § 87.

14. State taxes are to be assessed in the same manner as county and town taxes, with the addition of such further rules as may be prescribed in the acts laying such taxes. *Ib. ch.* 7, § 16.

15. In the city of Boston, all taxes, assessed for city or county purposes, may be assessed separately, as county taxes, and as city taxes, or under the denomination of city taxes only, as the city council shall from time to time direct. *Ib.* § 26.

16. The assessors shall assess upon the polls, as nearly as the same can be conveniently done, one sixth part of the whole sum to be raised; provided the whole poll tax, assessed in any one year, upon any individual, for town and county purposes, except highway taxes, shall not exceed one dollar and fifty cents; and the residue of said whole sum to be raised shall be apportioned upon property. *Ib.* § 27.

17. The assessors may add, to the amount of any tax to be assessed, such a sum, not exceeding five per cent. of the same, as any fractional divisions of the said amount may render convenient, in the apportionment thereof. *Ib.* § 28.

18. The assessors shall make a list of the valuation and the assessment thereon, and shall, before the taxes assessed are committed for collection, deposite the same, or an attested copy thereof, in their office, or, if there be no office, then with their chairman, for public inspection. *Ib.* § 29.

19. The first part of said list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and it shall contain, in separate columns, the following particulars, to wit:

The names of the inhabitants assessed; and opposite to their names,

The number of polls.

The amount of their poll tax.

The description of their real estate.

The true value of their real estate.

The reduced value of their real estate.

The tax assessed on such real estate.

The description of their personal property.

The true value of their personal property.

The reduced value of their personal property.

The tax on their personal property.

The sum total of each person's tax.

The second part of said list shall exhibit the valuation and assessment of the estates of non-resident owners; and it shall contain, in separate columns, the following particulars, to wit:

The names of the non-resident owners of the property assessed, or such description of them as can be given,

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The reduced value of such estate.

The tax thereon. *Ib.* § 30.

20. The assessors shall prepare a tax list to be committed to the collectors. The list shall be in substance as follows:

Names.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal property.	Total.	Time when pd.

NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.	

Ib. § 31.

21. The assessors shall within a reasonable time, commit the said tax list, with their warrant, under their hands, to the collector for collection. *Ib.* § 32.

22. The warrant, if signed by a majority only of the assessors, is valid. 19 *Pick.* 436, 442.

23. The warrant of the assessors shall specify the duties of the collector, as prescribed by law, in the collection of taxes, and the times when, and the persons to whom, the same shall be paid in by the collector, and it shall be substantially in the form heretofore used, except that it shall not be required to be under seal. *R. S. ch.* § 33.

24. If there be no collector, the assessors shall commit the tax lists, with their warrant, in the form prescribed in the preceding section, to the sheriff or his deputy, whose duty it shall be to collect such taxes. *Ib.* § 34.

25. Constables are to be collectors of taxes, when either the town does not choose collectors, or those chosen do not serve. It is therefore only when there shall be no constable or collectors, that *tax lists* are to be committed by the *assessors* to the sheriff of the county or his deputy. *R. S. c.* 15, § 79.

When the town treasurer is appointed collector of taxes he may appoint deputies with the powers of collectors, or he may issue a warrant to the sheriff or his deputy, or any constable of the town, directing them to distrain the property or take the body of any person who may be delinquent in the payment of taxes, and proceed in like manner as collectors are required to do. *R. S. c.* 15, § 60, 61.

See also title collectors.

26. When any warrant, issued for the collection of taxes, by the assessors of any town or parish, shall be lost or destroyed, the assessors of the same place may issue a new warrant therefor, which shall have the same force and effect as the original warrant. *Art. of Amendment,* § 51.

27. If one of three assessors, after notice, refuse to attend and act in assessing a tax, the other two may proceed without him. *R. S. c.* 2, § 6. 21 *Pick.* 82. 19 *Pick.* 442.

28. The omission to tax any person, or any polls or estates, through accident, error of judgment or mistake of law, does not render the tax void, or invalidate it in regard to other persons. 5 *Mass.* 547. 5 *Pick.* 498. 21 *Pick.* 81, 82, *Ib.* 97. 4 *Met.* 599.

29. If the assessors include in the assessment, persons not liable to be taxed, the tax may be enforced against those rightfully included. 5 *Pick.* 498.

30. If the assessment of a tax be illegal and void it may be re-assessed, but if it be once legally assessed, and a warrant issued for its collection, a re-assessment will be illegal and void. 15 *Mass.* 144. 5 *Pick.* 490. 7 *Pick.* 25.

31. Where separate and distinct real estates belong to the same owner, they are to be considered as distinct subjects of taxation, and must be separately valued and assessed; and each estate is subject to a lien for the payment of that portion only of the owner's tax, which shall be assessed on such particular estate. 13 *Pick.* 492.

32. A tax would be void, if made from the valuation and invoice of a preceding year. Or if the grants for two successive years are brought into one tax, or if two successive taxes are founded upon one valuation. *Ib.* 1 *Pick.* 140.

33. After any general assessment of a tax has been made by the assessors of a town, and committed to the proper officer for collection, and before another tax is committed to the assessors to assess, they have no authority to assess a poll or other tax on any person for the purpose of enabling him to vote at an election; nor is any person, on the payment of a tax so assessed upon him, qualified to vote, according to the third article of amendment of the constitution. 18 *Pick.* 575.

34. For the purpose of taxation, it shall be the duty of the cashiers of the several banks, the clerks of the several railroad corporations, and the clerks of all insurance com-

panies (except mutual insurance companies,) and the clerks of manufacturing, bridge, turnpike, and canal corporations, in this Commonwealth, annually, between the first and tenth day of May, to make returns in person or by mail, to the assessors of every city or town in this Commonwealth, in which any shareholder in such corporation may reside, in manner following, viz: The return shall state the name of each owner residing in such town, with the number of shares belonging to each, on the first day of May, of that year, and the par value of such shares. *Stat. of* 1843, *c.* 98, § 1.

Every clerk of any manufacturing corporation, in the return required to be made by him, shall state the whole amount of the capital stock of such corporation, and the amount of real estate and machinery which was assessed to the said corporation in the last assessment of the city or town where such corporation is situated. *Stat.* 1845, *c.* 190.

35. If any cashier or clerk mentioned in the preceding section, shall refuse or neglect to make such return, or shall wilfully falsify such return, he shall forfeit the sum of fifty dollars, for every such offence, to the use of the city or town in which such shareholder may reside, to be recovered by the treasurer of such city or town in any court of competent jurisdiction. *Ib.* § 2.

26. If any shareholder shall fraudulently transfer any share in either of the corporations mentioned in the first section of this act, for the purpose of avoiding taxation, he shall forfeit one half of the par value of the shares thus transferred, to be recovered in any court of competent jurisdiction, by the treasurer of the city or town in which such shareholder may reside; one half of the amount so recovered for the use of the town, and the other half for the use of the person or persons furnishing the necessary evidence in the case. *Ib.* § 3.

37. Whenever the cashier of any bank or the clerk of any corporation, mentioned in the thirty-fourth section, shall reside out of the Commonwealth, it shall be the duty of the directors to make the return required, under the same penalty as prescribed for cashiers and clerks in section thirty-fifth. *Stat.* 1844, *c.* 147, § 1.

38. For rules in relation to the assessment of the taxes of School Districts, in addition to those above stated, *see* "*School Districts.*"

DISCOUNT ON, AND ABATEMENT OF TAXES.

1. Towns may allow discount
2. Assessors to post up rates of discount, if allowed.
3. Reasonable abatements may be made by assessors, &c.
4. Costs which have arisen before abatement, to be paid.
5 If assessors refuse to abate taxes, the party may complain to to the county commissioners, &c.
6. Complaint to Commissioners the only remedy for a person liable to be taxed, who is overrated.
7. Otherwise, if not a resident.
8. Decision of Commissoners final.
9 No abatement allowed, unless a list has been brought in, &c.
10. Abatements to be applied for within six months
11. If tax has been paid, amount of abatements to be allowed out of the town treasury.
12. Party entitled to certificate of his abatement.

1. Any town may, at their annual meeting, allow a discount of such sums, as they may think expedient, to those persons who shall make voluntary payment of their taxes, within such periods of time, as the town shall prescribe for that purpose: and in such case the collectors shall make such discount accordingly. *R. S. ch.* 7, § 35.

2. When a discount shall be allowed, as provided in the preceding section, the assessors shall, at the time of committing their warrant to the collector, post up, in one or more public places within the town, notice of the rates of discount. *Ib.* § 36.

3. Any person, aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof;

and, if he shall make it appear to them, that he is taxed at more than his just proportion, they shall make a reasonable abatement to him; and they may for this purpose examine upon oath, (which may be administered by either of them,) the person so applying, and any witnesses whom he or they may see fit. *Ib.* § 37.

4. If any legal costs shall have accrued, before making any such abatement, as is herein provided for, the person applying for the abatement, shall, notwithstanding, pay such costs. *Ib.* § 36.

5. If the assessors shall refuse to make an abatement to any person, he may make complaint thereof to the county commissioners, and if upon the hearing of such complaint, it shall appear that the complainant is over-rated, the said commissioners shall make such abatement of his taxes, as they shall deem reasonable; provided, that the party aggrieved shall, in all cases, file his complaint with the clerk of the commissioners, within one month after the refusal of the assessors to allow an abatement. *Ib.* § 39.

6. If a person be over-rated by the assessors of the town where he resides, and is liable to be taxed, whether the excess is caused by including in the valuation property of which he is not owner, or that for which he is not liable to be taxed, his only remedy is by application for abatement. 6 *Pick.* 98.

7. But if a person owning real estate in a town where he does not reside is assessed in such town for his poll and personal estate, as well as his real estate, he is not obliged, for redress, to appeal as for over-taxation, but, having paid the tax, may recover it back in *assumpsit* from the town. 12 *Pick.* 7.

8. The judgment of the county commisssoners upon a complaint for the abatement of a tax is a judicial act, upon a subject of which they have final jurisdiction and in which

the exercise of their discretion cannot be revised by any other tribunal.

If they err in matters of law, a writ of certiorari lies. 19 *Pick.* 298.

9. No person shall have any abatement made, by the commissioners, unless he shall have brought in a list of his estate to the assessors, or shall show good cause for not having so done, and unless he shall, if required by the assessors, have made oath to the truth of the same. *R. S. ch.* 7, § 40.

10. No abatement shall be allowed to any person, unless he shall have made application therefor, within six months after the date of his tax bill. *Ib.* § 41.

11. Any person, who shall have an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the town, to the amount of the abatement allowed, together with all charges, except the legal costs, provided for in the fourth section. *Ib.* § 42.

12. Every person, whose tax shall be abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer. *Ib.* § 43.

AUCTIONEERS.

1. To be licensed by selectmen.
2. " . by commissioners, if selectmen refuse or neglect, &c.
3. To give bond to State Treasurer.
4. To keep an account of sales.
5. Penalty for selling without license.
6. May sell in any town within his county.
7. Penalty for receiving goods from minors and servants.
8. Penalty for selling their own goods by night.
9. Forfeiture of property offered for sale at auction, by person not licensed.
10. Tenants answerable if they permit unlicensed sales in their premises.
11. Sales by sheriff, executors, &c. excepted.
12. Licenses to be in force one year only.
13. An auctioneer cannot delegate his power.

1. The selectmen of any town may, by writing under their hands, license, for the term of one year, one or more suitable inhabitants of such town, to be auctioneers within the same; and each person receiving such license shall pay to the selectmen, for their use, the sum of two dollars.

The selectmen shall record every license, so granted, in a book so kept by them for that purpose. *R. S. c.* 29, § 1 and 2.

2. If the selectmen shall unreasonably refuse or neglect, after application made to them in writing, to license any person applying, such person, after giving fourteen days notice to them, and also giving them bonds to pay all costs in the case, may apply to the county commissioners of his county, who, on hearing the parties, may license the person so applying, if they shall judge it reasonable. *Ib.* § 3.

3. Each auctioneer shall give a bond, in a reasonable penalty, with sufficient sureties, to the treasurer of the Commonwealth, with condition to pay all auction duties, required by law, to the treasurer of the Commonwealth, and also that he shall, in all things, well and truly conform to the laws relating to auctions: which bonds shall be taken by the persons who granted the license, and be by them duly transmitted to the treasurer of the Commonwealth, with an indorsement of their approval thereon. *Ib.* § 6.

4. Every licensed auctioneer shall keep a fair and particular account of all goods and chattels sold by him, of the persons of whom the same shall have been sold. *Ib.* § 5.

5. If any person, not licensed and qualified as an auctioneer, shall sell or attempt to sell any real or personal estate whatsoever, by way of public auction, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, for every offence. *Ib.* § 7.

6. An auctioneer duly licensed may sell in any town within his county. *St.* 1837, *c.* 233.

7. If any person, licensed as aforesaid, shall receive for sale by auction, any goods from any minor or servant, knowing him to be such, or shall sell by auction any of his own goods before sunrise or after sunset, he shall forfeit to the use of the town a sum not exceeding two hundred dollars, for each offence. *Ib.* § 4.

9. If any person, not being licensed as an auctioneer in any town, shall sell or offer for sale, by auction, in such town, any goods or chattels, he shall forfeit the said goods and chattels to the use of such town; and the same may be seized by the selectmen of such town and libelled, according to the provisions of the one hundred and eighteenth chapter of the Revised Statutes concerning the seizing and libelling of forfeited goods. *Ib.* § 9.

10. The tenants or occupants of any house or store, having the actual possession and control of the same, who shall knowingly permit any person to sell any real or personal estate by public auction, in their said house or store, or in any apartment or yard appurtenant to the same, contrary to the provisions of this chapter, shall forfeit to the use of the town, a sum not exceeding five hundred dollars. *Ib.* § 10.

11. Nothing in this chapter shall extend to sales made by sheriffs, deputy sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians, or any other person required by law to sell any real or personal estate by public auction. *Ib.* § 11.

12. No license granted as aforesaid shall remain in force for more than one year from the date thereof. *Ib.* § 12.

13. An auctioneer cannot delegate his power to sell by auction, but he may employ another person to use the hammer, and make the outcry, under his immediate direction and supervision; nor will his occasional absence during the sale, subject his servant to the penalties of the statute against selling by auction without a license. 19 *Pick.* 482.

TAXES ON SALES BY AUCTION, AND DUTIES OF AUCTIONEERS IN RELATION TO THEM.

1. Sales by auction subject to a tax, except, &c.
2. Amount of tax on sales of stocks and shares in corporations. On sales of real estate, ships and other property.
3. Amount on leases, &c., sold by auction for a gross sum.
4. Amount on contracts by auction for sale and delivery of other leasehold property.
5. Amount on contracts for sale of goods, &c.
6. When bidding is for a part or sample, tax payable for the whole.
7. Tax to be paid when property is bid in by the owners, &c.
8. Auctioneers to render accounts of sales to treasurer, in June and December, except, &c.
9. Contents of auctioneers' accounts.
10. Auctioneers to make oath to their accounts.
11. Auctioneers to be allowed four per cent. on amount of tax.
12. When tax on sales does not exceed ten dollars for six months, or no sales have been made.
13. Penalty for neglect of auctioneers.
14. " fraud or deceit.

1. ALL sales by auction shall be subject to a tax to the Commonwealth, except the following, namely: sales made pursuant to any judgment, sentence, decree, order or rule of any court or judicial officer of the Commonwealth, or of any Court of the United States, having jurisdiction within this state; sales made by virtue of any writ, execution, warrant of distress, or order of law; sales of property held by executors, administrators, or guardians of estates of citizens of the United States, lying or being within this state; sales of pews in houses of public worship; and of wrecked vessels or portions thereof or of appurtenances or materials thereto belonging. *R. S. c.* 9, § 4. *St.* 1839, *c.* 111.

2. The tax upon the sales of stocks of the United States, or of any state, or of any county or town of this Commonwealth, the shares of the stock of any incorporated banks, insurance companies, and also of any company whatever incorporated under the authority of this Commonwealth, shall be one tenth of one per cent. on the amount of the sales. *R. S. c.* 9, § 5. *St.* 1844, *c.* 36.

The tax upon the sale of the shares of any manufacturing company incorporated under the authority of any of

the United States shall be one tenth of one per cent. on the amount of the sales. *St.* 1844, *c.* 36.

The tax upon the sale of any teas which may be imported from foreign countries into any port of this state and sold by the importers within thirty days after such importation shall be one quarter of one per cent. on the amount of sales. *St.* 1844, *c.* 90.

The tax upon sales of real estate, and of ships and vessels, shall be one half of one per cent. on the amount of the sales; and the tax upon all other sales, shall be one per cent. on the amount thereof. *R. S. c.* 9, § 5.

3. All contracts and engagements for any lease or underlease of real estate, or for the assignment of any lease or underlease of real estate, which shall be made or entered into by way of sale or bidding at public auction, if the same shall be bid off or sold for a gross sum, shall be subject to a tax of one half of one per cent. on such gross sum. *Ib.* § 6.

4. If such contract or sale, as described in the preceding section, shall be for an annual rent, or for a sum payable by instalments, for any term not exceeding seven years, the gross amount of such rent or instalments shall be subject to a tax of one half of one per cent. and for any term beyond seven years, and not exceeding fourteen years, to a tax of one third of one per cent; and for any term beyond fourteen years, to a tax of one fourth of one per cent. *Ib.* § 7.

5. All contracts and agreements for the sale, delivery, furnishing, or supplying, of any goods, wares and merchandize, or other personal property, which shall be made or entered into, by way of bidding or sale at public auction, shall be deemed sales by public auction of personal estate, and shall be subject to a tax of one per cent. on the whole value or amount of the goods or property which are the subject of such contract or agreement. *Ib.* § 8.

6. Where any sale or bidding shall be made at public auction, upon the rent of any smaller parcel of real estate, for the purpose of fixing the rent or price of any larger parcel of such estate, or upon any contract for a lease or underlease of real estate, for a shorter term, for the purpose of fixing and determining the rent or price of a longer term, and where such sale or bidding, in regard to any goods, wares and merchandize, or other personal property, or any contract or agreement to sell, deliver, furnish or supply the same, shall be of, or upon, any less quantity, for the purpose of fixing the price of a larger quantity, in every such case, the whole amount of the property sold, transferred, contracted for or negotiated, by the terms and conditions of such auction, and the amount of the rent, for the whole of the real estate so agreed to be leased, and for the whole term, for which it is to be leased, shall be subject to a tax, as if the whole had been set up and sold at auction. *Ib.* § 9.

7. When any auction, for the sale or lease of any property, or for any contract in relation thereto, shall have been actually begun, and the final purchase or bidding shall have been made by the owner of the property, by the auctioneer or by any person employed by either of them, the same tax shall be paid, as if the bidding had been made by any other person. *Ib.* § 10.

8. Every auctioneer, except in cases where the amount of taxes accruing upon the sales made for six months previous to the first day of June, shall not exceed ten dollars as hereafter provided for, shall, on the first day of June and December, in each year, or within sixty days thereafter, render to the treasurer of the Commonwealth, a true and particular account in writing, of all his sales and transactions at auction, not exempted from taxation, and of all the sums of money arising therefrom, such amounts to include all his said sales and transactions, between the time to

which his last preceding account was rendered, and the said first days of June and December, respectively. *Ib.* § 11.

9. The account mentioned in the preceding section shall carefully distinguish between sales of real estate and personal estate, and between sales of an entire property and of any part sold, or bid upon, for the purpose of fixing the price of any other part or the whole thereof. *Ib.* § 12.

10. The auctioneer shall take and subscribe, before some justice of the peace, an oath, that such account is true, that he has carefully examined all his entries and memorandums of sales by auction, and otherwise, and that the account exhibits the whole amount thereof, which is liable by law to pay a tax: and the oath so taken shall be certified and indorsed by the justice on said account. *Ib.* § 13.

11. The auctioneer, at the time of rendering such account, shall pay to the treasurer the amount of the tax accruing upon the sales contained therein, deducting four per cent. of the tax as his compensation. *Ib.* § 14.

12. Where the amount of taxes, accruing upon the sales made by any auctioneer, for six months previous to the first day of June, shall not exceed ten dollars, he may make his return for the whole year preceding the first day of December, either on that day, or within sixty days thereafter. *Ib.* § 15.

13. In case any licensed auctioneer shall have made or authorized no such sales, for one year previous to the first day of December in any year, he shall certify that fact in writing to the treasurer, and shall make oath to the truth of such certificate in the manner provided in the tenth section; and such oath shall be certified and endorsed in conformity with the provisions of said section. *Stat. of* 1847, *c.* 264.

Any auctioneer who shall fail to comply with the provisions above stated, shall be subject to a fine not exceeding ten dollars, and shall forfeit his compensation of four per

cent. of any tax accruing on any sales made or authorized by him, and shall pay interest on such tax, at the rate of two per cent. per month, from the expiration of said sixty days, until the same be paid, to be recovered in an action upon his official bond. *Ib.* § 16. *Stat. of* 1847, *c.* 264.

14. If any auctioneer or other person shall be guilty of any fraud or deceit, in the execution of any of the provisions of this chapter, in relation to sales by auction, he shall, for every such offence, forfeit a sum not exceeding one thousand dollars. *Ib.* § 17.

COLLECTORS OF TAXES.

1. How chosen.
2. To be sworn.
3. Form of oath.
4. To give bonds to the town.
5. Constables to be collectors, when, &c.
6. Town treasurer may be collector and may appoint deputies.
7. His power and duty as collector.
8. Collectors to keep list of persons paying taxes and to give receipts.
9. To return lists to selectmen twice a year.
10. What delivery of return sufficient.
11. Penalty for neglect and false return.
12. Compensation and fees of collectors.
13. Temporary collectors may be appointed by selectmen.
14. And by assessors to complete collections.
15. Putting up collection of taxes at auction.

1. Collectors may be chosen in such a manner as the meeting shall determine. As however the treasurer is to be chosen by ballot, whenever the town vote to unite the offices, treasurer and collector, they must elect by ballot. *R. S. c.* 15, § 33, 34, 60.

2. Collectors must be sworn to the faithful discharge of the duties of their office. *Ib.* § 33.

3. The following form of oath will answer for this and all cases where officers are to be sworn only to the faithful discharge of the duties of their office.

You, (name of person,) having been elected (name of

office,) for the town of (name of town,) for the year ensuing, solemnly swear that you will faithfully discharge the duties of that office So help you God. *Ib.*

4. Every collector shall give bond to the town, in such sum as the selectmen shall require, and with sureties to their satisfaction, for the faithful discharge of the duties of his office. *Ib.* § 80.

5. In case the persons chosen by a town as collectors shall refuse to serve in that office, or if no choice shall be made of such officers, the constables of the town shall be collectors of taxes. *Ib.* § 78.

6. The inhabitants of any town may, at any meeting, appoint their treasurer collector of taxes; and he may then appoint, under him, such deputies as may be necessary, who shall give such bonds for the faithful discharge of their duty, as the selectmen shall think proper; and the said collector and his deputies shall have the same powers, as are vested in collectors of taxes. *Ib.* § 60.

7. Any town treasurer, being appointed collector, may issue a warrant to the sheriff of the county, or his deputy, or to any constable of the same town, directing them to distrain the property, or take the body of any person who may be delinquent in the payment of taxes, and to proceed therein, in like manner, as collectors are required to do, in the like cases. *Ib.* § 61.

8. The collectors of state and county taxes, in each town, shall keep an accurate account of the names of all persons from whom they shall have reecived payment of any state or county tax, and of the time of such payment; and, upon request, shall deliver, to the person making the payment, a receipt, specifying his name and the time of such payment; and such receipt shall be admitted as presumptive evidence thereof. *R. S. c.*3, § 2.

9. The said collectors, whether the time for which they were respectivly chosen, shall have expired or not, shall,

twice in each year, namely, once in the month of February, not more than twenty days nor less than fifteen days before the first Monday in March, and once in the month of October, not more than twenty days nor less than fifteen days before the second Monday in November, return to the selectmen of their respective towns, an accurate list of all persons, from whom they shall have received payment of any state or county tax, subsequently to the time appointed for making their last preceding return. *Ib.* § 3.

10. Any collector who shall neglect to make such return, as is required in the preceding section, shall forfeit the sum of one hundred dollars, for every such neglect; and any collector, who shall make a false return, in respect to any part of such list, shall forfeit the sum of twenty dollars for every name, in respect to which he shall have made a false return. *Ib.* § 4.

11. It is not necessary that the list should be delivered to the selectmen at a meeting of the board; a delivery to one of them is sufficient.

The list is to remain with the selectmen for their use, and must not be taken away again by the collector. 7 *Pick.* 286.

12. Every collector shall be paid such compensation for his services as his town shall determine. *R. S. c.* 8, § 47.

For fees of collectors for the execution of any process, see title "Collection of Taxes."

13. Whenever the office of town treasurer, or the office of collector of taxes, in any town in this Commonwealth, shall be vacant by reason of death, removal, sickness, or other cause, or whenever such treasurer or collector shall be prevented from performing the duties of his office, the selectmen of such town may appoint in writing under their hands, a town treasurer or collector of taxes pro

tempore, who shall hold his office until another is chosen in his place, and shall be sworn and give bonds for the faithful discharge of the duties of his office, in the same manner as town treasurers and collectors of taxes are now required to do. *St.* 1838, *c.* 43.

14. Assessors have also the power in certain cases to appoint persons to *complete the collection of any tax;* but not to fill a vacancy in the office of collector of taxes. *See title Collection of taxes.*

15. As some of our towns still continue the custom of putting up the office of collector of taxes at auction, it may be well to remind them that the Supreme Court, in a late case, intimated the opinion that if the terms of the vendue are such that the highest bidder should at all events obtain the appointment, without regard to his fitness or qualifications, it would be difficult to sustain the election. 20 *Pick.* 418, 429.

COLLECTION OF TAXES.

1. Collectors to collect taxes according to warrant.
2. Warrant when sufficient.
3. Collectors to complete collections.
4. Demand to be made before distraining.
5. Party claiming abatement must produce certificate of assessors—Liable to pay fees and costs.
6. Errors in names not to defeat collection of taxes.
7. Collectors may demand aid: penalty for neglecting.
8 Distress and sale to pay taxes; except of certain goods.
9. Distress how long kept; how advertised and sold.
10. Sale may be adjourned once.
11. Surplus to be returned to owner on demand.
12. Sale of distress after the limited time renders the collector a trespasser.
13. Distress cannot be made after the decease of the person taxed.
14. If the collector become himself the purchaser, the sale is voidable.
15. After neglect to pay for fourteen days, party may be imprisoned.
16. In cases of doubtful credit, taxes may be collected forthwith.
17. Copy of warrant, &c., to be left with the jailor.
18. Persons, imprisoned for non-payment of taxes, how discharged.
19. Collectors and assessors to be notified; and they may appear as the creditors.
20. Collectors, when liable to pay the taxes and prison charges.
21. When persons remove from

collector's precinct, without paying, collector may himself forthwith collect.

22. Or may issue his warrant to sheriff, &c., for that purpose.

23. Where persons remove, die, or marry, without paying, collector may maintain action in his own name.

24. What constitutes sufficient removal.

25. For tax upon the estate of persons deceased, collector may be executor, &c.

26. Action for taxes maintainable only when given by statute.

27. In such actions, no interest can be recovered.

28. Shares of stockholders in corporations, may be sold for neglect or refusal to pay taxes.

29. Seizure of shares,--how made.

30. Recording officer of company to make known shares held by person taxed.

31. Sale of shares seized,—how made.

32. Recording officer to give new certificates to purchaser.

33. Case of persons who are not owners of the real estate taxed to them.

34. Demand where necessary.

35. Taxes to be a lien on real estate for two years and until alienation.

36. Separate real estates belonging to the same owner, how to be considered.

37. Tax assessed to non-resident owner of real estate, how may be collected.

38. What demand sufficient.

39. What demand necessary, where non-resident has an attorney in town.

40. What necessary where tax is to be collected by distraining and selling goods.

41. Where demand is made on attorney, collector to wait two months.

42. Resident mortgagee of real estate, when entitled to have payment of tax demanded of him, before sale for non-payment.

43. Non-resident mortgagee, when entitled to have payment demanded of him.

44. Affidavit of collector, &c., evidence of demand on attorney.

45. Affidavit of posting notifications, to be evidence, if recorded, &c.

46. Sales of real estate, how advertised by collectors.

47. Contents of advertisement.

48. Where name of the town has been changed.

49. Notices to be also posted up in some public place in the precinct of the collector and on the premises.

50. Sale by auction of sufficient, &c.

51. Sale, how made where the real estate cannot be divided without injury.

52. Collector may adjourn the sale, but not more than seven days in the whole.

53. Deed to be given to the purchaser.—Contents of deed.

54. Owner may redeem within two years.

55. How estate sold may be redeemed when purchaser cannot be found in the town, &c., of which he is demanded as resident.

56. Duty of town treasurer in such case.

57. What to be deemed evidence that purchaser cannot be found.

58. Where no collector is chosen, the sheriff or his deputy, shall collect taxes.

59. Their duty in such case.

60. Fees for collecting.

61. Liabilities of towns where collectors neglect to pay over.

62. Liability of collectors for such neglect.

63. If collector die before completing his collections, assessors may appoint one.

64. Collectors may be removed in certain cases, by assessors.

65. On the death, or removal of a collector, his lists to be delivered over to the assessors.

66. Deficiency in state or county tax, how supplied.

67. Collectors to be credited with abatements, &c.

68. Collector to exhibit accounts.

69. Penalty for not exhibiting.

70. Liability of collectors.

71. Not liable for mis-doings of assessors.

72. Not responsible for regularity of the town meeting, &c.
73. Fees; for levying a tax by distress; for selling real estate: when delinquent is committed to jail.

1. Every collector of taxes, and every constable, receiving any tax list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant. *R. S. c.* 8, § 1.

2. A warrant to the collector of taxes, signed by a majority of the assessors, is valid. 19 *Pick.* 436.

Where the only defect in a warrant, issued by assessors, to a collector of taxes, was an omission to direct him to sell distrained goods within seven days, it was held he was justified by such warrant in distraining goods and selling them in seven days, according to law. 1 *Met.* 328.

3. Every collector shall complete his collection of the taxes committed to him, notwithstanding his term of office shall have expired, before completing the same; except in the cases where he shall be removed from office by the assessors. *R. S. c.* 8, § 2.

4. The collector shall, before distraining the goods of any person for his tax, demand payment thereof, from such person, if to be found within his precinct: which demand shall be made, either of the party personally, or at the place of his usual abode. *Ib.* § 3.

5. If any person shall claim the benefit of an abatement, he shall exhibit to the collector demanding his taxes, a certificate of such abatement, from the assessors or other proper officer; and he shall be liable to pay all costs and officers' fees, incurred before he shall have exhibited such certificate. *Ib.* § 4.

6. If, in the assessors' list, or in their warrant and list committed to the collectors, there shall be any error in the name of any person taxed, the tax assessed to him may, notwithstaning such error, be collected of the person

intended to be taxed, provided he is taxable, and can be identified by the assessors. *Ib.* § 5. *See* 6 *Met.* 470.

7. Any collector, when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein; and if such person shall refuse to render such aid, he shall forfeit to the use of the town where the offence is committed, a sum not exceeding ten dollars. *Ib.* § 6.

8. If any person shall refuse or neglect to pay his tax, the collector shall levy the same by distress and sale of his goods, excepting the goods following, namely:

The tools or implements necessary for his trade or occupation: beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house keeping necessary for upholding life, and bedding and apparel necessary for himself and family. *Ib.* § 7.

9. The collector shall keep the goods distrained, at the expense of the owner for the space of four days, at the least, and shall, within seven days after the seizure, sell the same by public auction, for the payment of the tax and the charges of keeping and of the sale, having given notice of such sale, by posting up a notification thereof, in some public place in the town, forty-eight hours at least before the sale. *Ib.* § 8.

10. The collector may, if he see fit, once adjourn such sale, for a time not exceeding three days; in which case, he shall forthwith give notice of such adjournment, by posting up a notification thereof, at the place of sale, when he makes such adjournment. *Ib*, § 9.

11. If the distress shall be sold for more than the tax, and the charges of keeping the distress and making the sale, the collector shall return the surplus to the owner, upon demand, with an account in writing, of the sale and charges. *Ib.* § 10.

12. If a distress for non-payment of taxes, be sold by

the collector, after the expiration of the time limited for making such sale, the delay renders the collector a trespasser *ab initio* (from the beginning) and an action of trover will lie against him in favor of the owner of the goods sold, although no demand thereof be made before the commencement of the action, the tortious taking of personal property being a conversion. 14 *Pick.* 356.

13. A distress for the non-payment of a tax cannot be made after the death of the person on whom the tax is assessed. 9 *Met.* 504.

14. Where at a sale of goods for the non-payment of taxes, the collector of taxes himself becomes the purchaser, it was held that such sale was voidable, at the election of the owner of the goods. 14 *Pick.* 356.

15. If any person shall refuse or neglect, for fourteen days after demand thereof be made, to pay his tax, and the collector cannot find sufficient goods, upon which it may be levied, he may take the body of such person and commit him to prison, there to remain, until he shall pay the tax and charges of the commitment and imprisonment, or shall be discharged by order of law. *R. S. c.* 8, § 11.

16. When the credit of any person taxed shall be considered doubtful by the assessors, they may order the collector forthwith to compel payment by distress or imprisonment, whether the tax be made payable immediately, or at a future day, or by instalments, or otherwise. *Ib.* § 12.

17. When the collector shall commit any person to prison he shall give the keeper of the prison an attested copy of the warrant with a certificate thereon, under the hand of the collector, setting forth the sum, which such person is to pay as his tax, with the cost of taking and committing him, and, that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body. *Ib.* § 13.

18. When any person, who is committed to prison for the non-payment of taxes, shall be unable to pay the same with the incidental charges, he shall be entitled to his discharge, in like manner as is provided for the discharge of prisoners committed on execution for debt in the ninety-eighth chapter of the Revised Statutes. *Act of Amendment*, § 1.

19. The notice required in such case to be given to the creditor, shall be given to the assessors of the place where the tax was assessed, and to the collector by whom the party was committed; and the said assessors and collector, or any of them, may appear as creditors to oppose the discharge of the prisoner, and may do all things in relation to the proceedings, which a creditor might do by force of the said ninety-eighth chapter. *Ib.* § 1.

20. When any person, committed for the non-payment of taxes, shall be so discharged, the collector shall be liable to pay the tax, with the charges of imprisonment, unless he shall have arrested and committed the party within one year after the tax was committed to him to collect, or unless he shall be exonerated therefrom by the town or parish to which the tax is due. *Ib.* § 1.

He will not, however, be liable for his support while in jail. 3 *Met.* 152.

21. When any person shall, after the assessment of a tax upon him, remove out of the precinct of the collector without paying his tax, the collector may demand payment thereof, wherever such person may be found; and in default of payment, the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he may be found. *R. S. c.* 8, § 14.

22. Or he may issue his warrant to the sheriff of the county or his deputy, or to any constable of the town where such person may be found, directing them to dis-

train the property or to take the body, and to proceed therein in like manner as collectors are required to do in the like cases. *St.* 1842, *c.* 34.

23. When any person, who is taxed, shall remove as aforesaid, or shall die, or being an unmarried woman, shall be married, before payment of the tax, the collector may, in his own name, maintain an action of debt or assumpsit, in like manner as for his own debt, and he may, for that purpose, in like manner, have a process of foreign attachment against any trustee of such person, as provided in the one hundred and ninth chapter of the Revised Statutes. *R. S. c.* 8, § 15.

24. Leaving the precinct of the collector, with the intention of returning at the expiration of six months, was held to be such a removal while thus absent, as would authorize the collector to maintain an action in his own name to recover the payment of a tax duly assessed, before such change of residence. 23 *Pick.* 235, 240.

25. A collector of taxes may sue in his own name, for any tax lawfully assessed upon the personal estate of any deceased person and maintain his action against the executor, or general or special administrator. *Stat. of* 1838, *c.* 235.

26. No action can be maintained to compel the payment of taxes, except in the cases in which an action is expressly given by the Statutes. 6 *Mass.* 44. 8 *Met.* 393.

27. In such an action the collector will not be entitled to recover any interest on the taxes committed to him. 9 *Mass.* 324.

28. Any share or interest of any stockholder in any corporation that is or may be incorporated under the authority of this Commonwealth, may be seized and sold for the neglect or refusal of such stockholder to pay his taxes. *Stat. of* 1846, *c.* 195, § 1.

29. Such seizure may be made by leaving with the clerk, treasurer, or cashier of the company, or if there be no such officer, with any officer or person who has at the time the custody of the books and papers of the corporation, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum which such stockholder is to pay as his tax, and that, upon his neglect or refusal to pay said tax, he has seized said share or interest. *Stat. of* 1846, *c.* 195, § 2. *R. S. c.* 90, § 36.

30. The officer of the company who is appointed to keep a record or account of the shares or interests of the stockholders therein, shall, upon the exhibiting to him of said warrant, be bound to give a certificate of the number of shares or amount of the interest held by the person taxed. *Stat. of* 1846, *c.* 195, § 4. *R. S. c.* 97, § 39. *Ib. c.* 90, § 38.

31. The sale of such share or interest shall be made in the manner and subject to the rules prescribed by law for the sale of goods by collectors of taxes in like cases. *Stat. of* 1846, *c.* 195, § 3.

32. An attested copy of the warrant and of the return thereon, shall, within fourteen days after the sale, be left with the officer of the company, whose duty it may be to record tranfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfer. *Stat. of* 1846, *c.* 195, § 4. *R. S. c.* 97, § 40.

33. When any person shall be taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of any cattle, sheep, horses, swine, or other stock, or any produce of said estate, belonging to the owner thereof, which, within nine months after such assessment

is committed to him, shall be found upon the premises, in the same manner, as if such stock or produce were the property of the person so taxed. *R. S. ch.* 8, § 16.

34. No demand need be made as provided in the preceding section, if the person, on whom the tax is assessed, shall have resided within the precinct of the collector, at the time of the assessment, and shall subsequently remove therefrom, and remain absent three months. *Ib.* § 17.

35. Taxes assessed on real estate shall constitute a lien thereon, for two years after they are committed to the collector; and may, together with all incidental costs and expenses, be levied by sale thereof, if the tax is not paid within fourteen days, after a demand of payment made either upon the person taxed, or upon any person occupying the estate; such sale to be conducted in the manner hereinafter stated for the sale of lands of non-resident proprietors, for non-payment of taxes; but nothing in this section shall restrain the collector from selling any real estate for taxes after the said term of two years shall have elapsed, unless such estate shall have been alienated in the mean time. *Ib.* § 18.

36. Where separate and distinct real estates belong to the same owner, they are to be considered as distinct subjects of taxation, and must be separately valued and assessed; and each estate is subject to a lien for the payment of that portion only of the owner's tax which shall be assessed on such particular estate. 13 *Pick.* 492.

37. When any tax on real estate shall be assessed to any non-resident owner thereof, the collector may, at his election, collect such tax of the said owner, in like manner as in the case of a resident owner, or he may collect the same by the sale of such real estate, in the manner hereinafter stated. *R. S. ch.* 8, § 19.

38. A demand, by a collector, of payment of a tax assessed on a non-resident, who has no agent or attorney

within the Commonwealth, is sufficient to justify a subsequent seizure and sale of his goods, if such demand be made at his last and usual place of abode, in the town where he is taxed. 1 *Met.* 328.

39. If any non-resident owner of real estate, shall, previous to the assessment of any tax, have given a written authority to some inhabitant of such town, as his attorney, to pay the taxes imposed on such estate, and such authority shall have been filed with, or recorded by, the clerk of such town, the demand of payment shall be made upon such attorney; otherwise no demand need be made of payment of taxes assessed on the real estate of non-resident owners. *R. S. ch.* 8, § 20.

40. If he wish to collect the tax by distraining and selling goods, and not by a sale of the real estate, a demand would seem to be necessary. *See* 1 *Met.* 328, § 30 *of the title.*

41. In case of a demand, made upon the attorney of a non-resident owner, as is required in the thirty-ninth section, the collector shall not proceed to advertise the sale of the lands, until after two months from the time of such demand. *R. S. ch.* 8, § 21.

42. If any mortgagee of real estate, situated in the city or town of which he is resident, shall, previous to the assessment of any tax, have given a written notice to the clerk of such city or town, that he holds a mortgage on such real estate, which notice shall contain a description of the estate which is held by him, as mortgagee, it shall be the duty of the collector, on all sales hereafter made, before proceeding to sell the same for non-payment of taxes assessed thereon, to demand payment of said taxes, of such mortgagee in the manner provided in the thirty-fifth section of this title. *Stat. of* 1848 *c.* 166, § 1.

43. If any non-resident mortgagee of real estate shall appoint an attorney, with the authority, and for the pur-

poses, named in the thirty-ninth section of this title, in regard to non-resident owners, and such authority shall have been filed with, or recorded by, the clerk, as provided in said section, demand of payment shall be made of such attorney before said estate shall be sold for non-payment of taxes. *Ib.* § 2.

44. The affidavit of any disinterested person, or of the collector, who shall make such sale as provided, being taken before a justice of the peace, and recorded by the clerk of the town where the land lies, before any sale is made, and stating the demand of payment of tax, the person of whom, and the time and manner in which it was made, shall be admitted as competent evidence of the demand. *R. S. c.* 8, § 22.

45. The affidavit of any disinterested person, taken before a justice of the peace, of the posting up of notifications of the sale of land, by any collector or other officer for payment of taxes, shall be admitted as competent evidence of the fact of notice, upon any trial on the validity of such sale; provided, that such affidavit, made upon one of the original advertisements, or upon a copy of one of them, be filed and recorded in the registry of deeds of the county where the land lies within six months after such sale. *Ib.* § 23.

46. The collector shall give notice of the time and place of sale of any real estate taken for taxes, by an advertisement thereof, three weeks successively, in some newspaper of the county where the real estate lies, if there be any such newspaper, and if not, then a newspaper printed in any adjacent county; the last publication of which advertisement shall be at least one week before the time of sale. *Ib.* § 24.

47. The advertisement, required in the preceding section, shall state the names of the owners, if known to the collector, with the amount of tax assessed on their lands

respectively, a substantially accurate description of the rights, lots, or divisions, of the real estate to be sold, and, where the owners are not so known, the advertisement shall state the amount of the taxes on the several rights, lots, or divisions, of the real estate to be sold as aforesaid. *Ib.* § 25. *Stat. of* 1848, *c.* 166, § 3.

48. When any real estate, to be sold under the provisions of this chapter, is situated in any town, the name of which shall have been changed by law, within three years next preceding the sale, the collector shall, in his advertisement and notices of the sale, designate such town by its former and also its present name. *R. S. c.* 8, § 27.

49. The collector shall also post up a notice, similar to that required by the two preceding sections, in some convenient and public place, in his precinct, three weeks before the time of sale, and also on the premises by him advertised to be sold for non-payment of taxes: provided, any part of such premises shall be bounded by any street, lane, court, or public highway. *Ib.* § 27. *Stat. of* 1848, *c.* 166, § 4.

50. If no person shall appear to pay the taxes, at the time and place appointed for the sale of real estate, taken for taxes, the collector shall sell, by public auction, so much of the real estate, as shall be sufficient to discharge such taxes and all necessary intervening charges. *R. S. c.* 8, § 28.

51. [illegible]

due of the proceeds of the sale to the owner of the estate, upon demand. *Ib.* § 29.

52. The collector may adjourn his sale from day to day, not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale. *Ib.* § 30.

53. The collector shall execute and deliver to the purchaser a deed of the real estate, or of the rents and profits sold; which deed shall state the cause of sale, the price for which the estate, or rents and profits were sold, on whom the demand for the tax was made by him, the places in the town or city where notices were posted, the newspaper in which the advertisement of such sale was published, and the place of residence of the grantee; and if the real estate shall have been sold, shall convey, subject to the right of redemption, provided for in the next section, all the right and interest, which the owner had therein, at the time when the same was taken for his taxes. Such deed, in order to be valid and effectual, shall be recorded within thirty days from the day of sale. *R. S. c.* 8, § 31. *Stat. of* 1848, *c.* 166, § 5.

54. The owner of real estate, sold for payment of taxes, or his heirs or assigns, may at any time within two years from the day of sale, redeem the estate sold, by paying or tendering to the purchaser, his heirs or assigns, the sum paid by him, with ten per cent. interest and all necessary intervening charges; and, when the rents and profits shall be sold for payment of taxes, the same may be redeemed at any time within the said two years, in the manner provided, in the seventy-third chapter of the revised statutes, for the redemption of rents and profits taken on execution. *R. S. c.* 8, § 32.

55. If upon reasonable search, the purchaser of real estate sold for non-payment of taxes

in the town or city of which he is described in the collector's deed as resident, then the owner of such real estate may redeem the same, in the manner prescribed by the preceding section, on paying to the treasurer of the town or city where such real estate is situated, the amount specified in said section. *Stat. of* 1848, *c.* 166, § 6.

56. It shall be the duty of the treasurer to receive such money, when paid to him, as aforesaid; and to give to the person paying the same, a certificate of such payment, specifying the estate on which the tax was originally assessed; and such certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and, when so recorded, shall have the effect to release and discharge all the right and title acquired under the collector's deeds. It shall also be the duty of such treasurer to hold all money, which may be received by him by virtue of the foregoing provision, for the use and benefit of the person entitled thereto; and to pay over the same on reasonable demand. *Ib.* § 7.

57. The affidavit of any disinterested person, taken before a justice of the peace, of the search made under the fifty-fifth section, shall be admitted as competent evidence of the facts therein stated, provided such affidavit shall be made and filed in the registry of deeds within ninety days from the time when said search shall have been completed. *Ib.* § 8.

58. When any town shall neglect to choose a collector, the sheriff of the county or his deputy shall collect the taxes assessed therein. *R. S. c.* 8, § 33. *See Collectors*, 8.

59. When the tax list and warrant of the assessors shall be committed to the sheriff, or his deputy, he shall, forthwith, post in some public place, in the town assessed, an attested copy of such tax list and warrant; and shall make no distress for any tax, till after thirty days from the time of posting up such copy. *Ib.* § 34.

60. If any person shall pay his tax on such list, within the thirty days mentioned in the preceding section, the officer shall receive for his fees, five per cent. on the sum assessed; but if any tax shall remain unpaid after the said thirty days, the officer shall proceed to collect the same, by distress or imprisonment, in the same manner as collectors are required to proceed in the like cases; and the officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment. *Ib.* § 35.

61. If any collector of taxes shall neglect to pay, within the time required by law, such sums of money as ought by him to be paid to the state treasurer or county treasurer, the town, by which such collector was appointed, shall be liable for such sums, to be recovered in an action of debt, at the suit of the treasurer of the state, or of the county respectively. *Ib.* § 37, 38.

62. If any collector shall neglect seasonably to pay any state or county tax committed to him, whereby the town shall be compelled to pay the same, or shall neglect seasonably to account for and pay in any town tax committed to him, the town may recover the amount thereof, with all damages sustained through such neglect, with interest, by an action on his official bond, if any shall have been given, and if none, by an action for money had and received. *Ib.* § 44.

63. If any collector shall die before completing his collection of any tax committed to him, the assessors may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and they may commit the same tax list to him with their warrant accordingly; and such person shall have the same power and duties, and be under the same liability as other collectors are. *Ib.* § 39.

64. If any collector shall become insane, or otherwise

in the judgment of the assessors, unable to discharge his duty, or shall abscond, or shall remove, or, in the judgment of the assessors, shall be about to remove from the town, or shall refuse, on demand, to exhibit to the selectmen or assessors his accounts of collections, the assessors may remove him from office, and appoint another collector, as in the case of the death of the collector. *Ib.* § 40. *See Collectors*, 5.

65. In case of the death or removal from office of any collector, it shall be the duty of his executors or administrators, and of all other persons, into whose hands any of his unsettled tax lists may come, forthwith to deliver the same to the assessors. *Ib.* § 41.

66. If, in consequence of the collector's failing, without his own default, to collect any tax, there shall be a deficiency of the amount due on any state or county tax, it shall be supplied by the collector, from the proceeds of the collection of town taxes, if any, in his hands; and, if he have none, by the town treasurer, on the written requisition of the collector. *Ib.* § 42.

67. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person who has been committed to prison within one year from the receipt of the tax list by the collector, and has not paid his tax, and also with any sums, which the town may see fit to abate to him, due from persons who shall have been committed after the expiration of one year. *Ib.* § 43.

68. Every collector, shall once in every two months, if required, exhibit to the selectmen, and, where there are no selectmen, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts, for all money paid into the treasury by him. *Ib.* § 45.

69. If any collector shall neglect so to exhibit his ac-

counts, he shall forfeit to the use of his town the sum of two and a half per cent. on the sums committed to him for collection. *Ib.* § 45.

70. It is a well settled rule of law that executive officers are not liable to actions for the regular execution of precepts sufficient in point of form, and coming from an authority having jurisdiction of the subject. 13 *Mass.* 282, 283. *Ib.* 288. 19 *Pick.* 436.

71. This rule applies to collectors. In every case within the power of the assessors to decide, their warrant justifies the collector, and he is holden to execute it; for he does not incur the penalty of their misdoings, or wrong estimates. 10 *Mass.* 119. 13 *Mass.* 282, 283.

72. Nor is he responsible for the regularity of the town meeting or of the validity of the votes of the meeting at which the tax is granted. 19 *Pick.* 436, 440.

73. Fees* for levying a tax of distress for any sum not exceeding one hundred dollars, are four cents for every dollar; all above one hundred dollars, and not exceeding two hundred dollars, two cents for every dollar; and for all above two hundred dollars, one cent for every dollar; necessary travel one way, four cents a mile. *R. S. c.* 122, § 5.

And all actual expenses necessarily incurred in keeping the goods distrained and in making the sale. *R. S. c.* 8, § 8 & 10. 1 *Pick.* 177.

For selling real estate for the payment of taxes, the same rate of poundage, the same travel, and all necessary intervening charges. *R. S. c.* 8, § 27 & 31.

Where the delinquent is committed to jail, the collector would be entitled to the same poundage and travel. 4 *Mass.* 411. He would also charge for the copy of the

* No fees are expressly provided by law for collectors; but the Revised Statutes direct that in all cases not expressly provided for by law, the fees of all public officers, for any official duty or service, shall be at the same rate as then prescribed in the one hundred and twenty second chapter, for the like services. *R. S. c* 122, § 21.
The like services are those of the Sheriff. *See R. S. c.* 122, § 5.

warrant left with the jailor, at the rate of twelve cents a page. *R. S. c.* 122, § 5.

Page, used as a measure of computation, means two hundred and twenty-four words. *Ib.* § 22.

CONSTABLES.

1. Nature of the office.
2. How chosen and sworn.
3. Penalty for refusing to serve as constable.
4. If person elected constable shall not declare his acceptance &c. a new choice to be made.
5. If he refuses to take the oath, town treasurer shall prosecute.
6. Persons exempted from being constables.
7. To be collector of taxes, when, &c.
8. Constables must serve warrants of treasurers, when collectors.
9. Constables to notify persons elected to office.
10. Constables shall serve writs, warrants, &c.
11. Constables may serve notices of petitions to general court &c.
12. Constables may serve writs in personal actions, where damages do not exceed seventy dollars.
13. " may serve writs where their towns, &c., are parties.
14. " may serve writs of replevin on sheriffs to amount of seventy dollars.
15. " may serve process in unincorporated places annexed, &c.
16. " may convey persons or property taken to the jail, &c., out of their town.
17. " may arrest and confine persons for disturbing town meetings.
18. " must execute warrant from coroners.
19. " must make returns of the same.
20. Penalty for not executing and returning such warrants.
21. When any jurors fail to appear, how constable should complete the number.
22. Warrant of coroner, to constables of what town may be directed.
23. Constables to serve venire for jurors on selectmen, &c.
24. " to summon jurors.
25. Venire issued in term time when served, &c.
26. Penalty for neglect of duty.
27. Constables exempt from serving as jurors.
28. May apprehend offenders in cases of felony, &c. without warrant.
29. Where affray takes place in his presence, may keep the parties in custody till it is over.
30. May demand the assistance of others, when.
31. Where affray is past cannot arrest without warrant.
32. How long constable may imprison a felon, after arresting him.
33. May break open doors to take a felon.
34. Cannot without warrant, arrest except, &c.
35. Constables to complain of the breaches of certain laws.
36. Justices of the peace may command the assistance of constables, &c., for suppressing riots, &c.
37. What offenders constables &c., may arrest without written warrant.
38. Selectmen may appoint special constables.
39. Fees of constables.
40. May be required to give bonds.
41. When so required not obliged to serve.

1. The office of constable is either ministerial, in obeying warrants and other precepts, or is original, as a conservator of the peace at the common law.

The ministerial duties of constables include, first, the service of writs, warrants and other processes from courts of law, in which, to a certain extent, he has concurrent powers with the sheriff; and secondly the execution of processes issuing from the municipal authorities or having relation to municipal business. We shall confine ourselves under this title to the duties of constables as town officers, with a brief notice of their authority at common law as conservators of the peace. In the execution of precepts from the courts they are governed by the same rules as the sheriff or his deputies. Instructions so full and minute as an officer would require who wishes to do that business securely and accurately, would require too large a space in our manual. Any other would be of little value.*

2. Constables are to be chosen in such manner as the town shall determine, and to be sworn to the faithful discharge of the duties of office. *See town officers and their election.* § 1, 2, 3.

3. Any person chosen to the office of constable, not being exempted from serving therein, and being able in person to execute the same, who shall refuse to take the oath and to serve in such office, shall forfeit to the use of the town the sum of twenty dollars. *ch.* 15, § 66.

4. Every person, chosen to the office of constable, shall, if present, forthwith declare his acceptance or refusal of the same; and in case he shall not declare his acceptance, the town shall proceed to a new election, until some one shall accept the office and take the oath. *Ib.* § 67.

5. Any person, who shall be present in town meeting, and declare his refusal to serve in the office of constable,

* See Hartshorn's New England Sheriff, for a full and accurate digest of the laws on this subject.

or who shall neglect, for the space of seven days, after being summoned, to take the oath of office, and shall not pay the fine aforesaid, shall be prosecuted therefor by the treasurer of such town. *Ib.* § 68.

6. No person, who is in commission for any office in this state or of the United States, or who is a ministerof the gospel, or a member of the council, senate, or house of representatives, or who has been a constable or collector of taxes, of any town, within seven years next preceding, shall be obliged to accept the office of constable. *Ib.* § 69.

7. Constables are to be collectors of taxes, when the town does not choose persons to that office, or when those chosen refuse to serve. *Ib.* § 33.

8. Constables shall execute all warrants from the town treasurer, who shall also be appointed collector, requiring them to collect taxes due, or to distrain the property or take the body of any delinquent in the payment of the same. *Ib.* § 61.

9. Constables shall serve all warrants and other processes, lawfully directed to them by the selectmen of their town, for notifying town meetings or for other purposes. *Ib.* § 70. *See Town meetings*, § 2 & 8.

Also the warrant of the clerk, directing them to summon town officers chosen, to appear and take the oath of office. *Ib.* § 39. *See Town Officers and their Election*. § 9.

10. And all writs, and warrants and other processes to them directed by the judges of probate, county commissioners, and justices of the peace. *R. S. c.* 83, § 11, *c.* 84, § 3, *c.* 85, § 30.

11. Constables may serve notices of petitions to the general court, subpœnas, and notices to take depositions. *R. S. c.* 2, § 9. *c.* 94, § 2, 18.

12. Any constable may serve, within his own town, any

writ or other process, in any personal action, in which the damages shall not be laid at a greater sum than seventy dollars. *R. S. c.* 15, § 71.

13. Any constable may serve any such writ or process as described in the preceding section, and any warrant or other process in criminal cases, in which his town, parish, or religious society or school district is a party, or interested. *Ib.* § 72.

14. Constables may also serve writs of replevin, in cases where the sheriff or his deputy shall be a party, and in which the value of the property to be replevied, shall not exceed the sum of seventy dollars. *Ib.* § 73.

15. When any unincorporated place is annexed to any town for the purpose of taxation, the constables of such town shall have and exercise, in such unincorporated place, the same powers as if the same were a part of their town. *Ib.* § 74.

16. Every constable may, in the execution of a warrant or writ duly directed to him, convey, beyond the limits of his own town, as well any prisoners, as things, in his custody under such process, either to the justice who issued it, or to the common jail or house of correction of the county of which such constable is an inhabitant. *Ib.* § 75.

17. Constables under the directions of the presiding officers, must arrest and confine persons conducting themselves in a disorderly manner at town meetings. *Ib.* § 30. *See "Town Officers,"* § 19.

18. Any constable receiving a warrant from a coroner, must forthwith execute the same by summoning six good and lawful men of the county to appear before such coroner at the time and place mentioned in the warrant. *R. S. c.* 140, § 2.

19. At such time the constable must repair to the place where the dead body is and make return of his warrant to

the coroner, and of his doings thereon under his hand. *Ib.* § 3.

20. Any constable, who shall unnecessarily neglect or fail to execute or return such warrant, shall forfeit the sum of ten dollars; which forfeiture may be recovered to the use of the county, with costs of suit, by action of debt, or on the case, to be brought by the coroner. *Ib.* § 3.

21. If the six jurors returned shall not all appear, the constable, if so ordered by the coroner, shall return jurors, from the by-standers, to complete the number. *Ib.* § 4.

22. The warrant of the coroner may be made to the constable of the town where the dead body is, or of one of the adjoining towns. *Ib.* § 2.

The authority of the constable under the warrant, it will be seen, extends beyond the town of which he is the officer.

23. It is the duty of a constable upon the receipt of a "venire" for jurors, to serve the same without delay on the selectmen and town clerk. *R. S. ch.* 95, § 15.

24. He shall also, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the venire, with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification, of his having been drawn, and also of the time and place of the sitting of the court, at which he is to attend, and shall make a return of the venire, with his doings thereon, to the clerk, before the opening of the court from which it was issued. *Ib.* § 17.

25. When however, venires shall issue in term time, they shall be served and returned on such days as the court shall direct. *Ib.* § 18.

26. If by any neglect of the constable in discharging

his duties, the jurors to be returned from any place, shall not be duly drawn and summoned to attend the court, he shall pay a fine not exceeding twenty dollars, to be imposed by the same court, to the use of the county in which the offence is committed. *Ib.* § 39.

27. Constables are exempt from serving as jurors. *Ib.* § 2.

For the law in relation to the drawing of jurors, see title "*Duties of Selectmen as to Jurors.*"

28. At common law by the original and inherent power which the constable possesses, he may apprehend the offender in case of felony, and other aggravated or capital offences, committed in his view, by virtue of his office, and without warrant. *Davis's Justice*, 38.

29. Where an affray takes place in his presence, he may either keep the parties in his custody till it is over, or he may carry them immediately before a magistrate. *Ib.*

30. He has power to demand the assistance of others, when in the execution of his office for the preservation of the peace, or for the apprehending and securing any person for the breach thereof, or for any other criminal cause. *Ib. and R. S. c.* 15, § 77.

31. If the affray be past, and there is no danger of death, the constable cannot arrest the offender without a warrant from a justice of the peace. *Davis's Justice*, 38.

32. When a felony has been committed, it is agreed that a constable may arrest and imprison the felon, till he can be conveniently conveyed to a justice of the peace, or to the common jail. *Ib.*

33. And it is also agreed that he may break open doors to take the felon, if he be in the house, and the constable's entry is denied after demand and notice that he is a constable—and the reason is, that he is *ex officio*, a conservator of the peace, and is not only permitted, but by law enjoined, to take a felon; and if he omits his duty in

this respect, he is punishable for such neglect. But there must be a felony done, and the constable must "be ascertained" of the fact. *Ib.* 38 & 39.

34. But in general, a constable cannot, any more than any other individual, of his own accord and without warrant, justify the arrest of a supposed offender, upon suspicion of his guilt, unless he can show that a felony has been committed, and the reasonableness of the suspicion that the party arrested is guilty. *Ib.*

35. Constables shall take due notice of, and prosecute for all violations of, the laws respecting the observance of the Lord's day, and of the laws to prevent profane swearing, and the laws against gaming. *R. S. ch.* 15, § 76.

36. The statutes provide that every justice of the peace may, as a conservator of the peace, upon view of any affray, riot, assault, or battery, within his county, without any warrant in writing, command the assistance of every sheriff, deputy sheriff, and constable, and of all other persons present, for suppressing the same and for arresting all who are concerned therein. *R. S. c.* 85, § 27.

37. Also, that any constable, or any other person by his order, may apprehend all rogues and vagabonds, and all idle and dissolute persons, who go about begging; all persons who use any juggling or unlawful games or plays; common pipers, and fiddlers; stubborn children, runaways, common drunkards, common night walkers, pilferers, and all lewd, wanton, and lascivous persons, in speech or behavior; common railers and brawlers, and persons who neglect their calling or employment, misspend what they earn, and do not provide for themselves, or for the support of their families; all persons who shall sell any spirituous or fermented liquor without license, in the open air, in any booth or other temporary building, and all other idle and disorderly persons, found in any street, highway, or other public place, in the night time, committing any of the of-

fences or disorders before mentioned, without a written warrant, and may keep such persons in custody in any convenient place, not more than twenty-four hours, Sundays excepted, at or before the expiration of which time, every such person shall be brought, before a justice of the peace, or police court. *R. S. c.* 113, § 5 & 7.

38. The selectmen of any town in this Commonwealth, or a majority of the same, are empowered to appoint, for a term not exceeding ten days, special constables, whenever they shall deem it necessary so to do, in order to preserve the public peace; and all constables so appointed shall be sworn to the faithful discharge of their duties, and shall, for the time being, have and exercise the same powers as other constables, so far as relates to preserving the public peace and the service and execution of criminal process within the towns respectively where they belong, and any such criminal process may be directed to them accordingly. *Stat. of* 1842, *c.* 37.

39. The fees of Constables are—

For serving a venire, twenty-five cents, and for travel to the place of return, at the rate of 4 cents a mile, to be paid out of the county treasury.

For summoning the jurors upon a coroner's inquest, and attendance thereon, at the rate of ninety cents a day, to be paid out of the county treasury. *R. S. c.* 122, § 8.

For service of writs, warrants, executions, subpœnas or other legal processes, the same fees as are allowed to sheriffs for like services. *See R. S. c.* 122, § 5 & 8.

For fees for collection of taxes, see title "*Collection of Taxes*," § 61.

40. The selectmen of any town, may require that any person who may be chosen constable, shall give bonds to the inhabitants of said town, with sureties to be approved by the selectmen, in a penal sum not less than five hundred dollars, with condition for the faithful performance of

his duties as constable, in the service of all civil processes which may be committed to him; and any person injured by any breach of the condition of said bond, may, at his own expense, institute a suit thereon, in the name of said inhabitants, and prosecute the same to final judgment and execution. *Stat. of* 1845, *c.* 70, § 1.

41. No constable of whom such bonds shall be required, shall be competent to serve any civil process, till such bond shall be duly executed, approved, and filed in the town clerk's office, and no person of whom such bond shall be required as aforesaid, shall be liable to any fine for the non-acceptance of the office of constable. *Ib.* § 4.

ELECTIONS.

1. QUALIFICATIONS OF VOTERS.

1. For town, county and state officers and representatives to Congress.
2. For presidential electors.
3. For voters on the question whether town will send representatives to the general court.
4. Analysis of provisions
5. Payment of tax sufficient, although illegally assessed.
6. If paid by another when sufficient.
7. Definition of word *resident*.
8. Persons residing on lands ceded to U. S. not entitled to vote.
9. Persons exempted from assessment on account of age, poverty or infirmity.
10. Persons exempted from poll tax from being over seventy years of age.
11. What is to be understood by exemption from taxation.
12. Selectmen to make out and post up lists of voters.
13. Selectmen to be in session for securing evidence of qualifications, and to give notice thereof.
14. Sessions where voters exceed one thousand.
15. At such sessions to correct lists of voters.
16. Penalty for giving false answer to selectmen at such sessions.

1. Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the state one year, and within the town in which he may claim a right to vote, six months next preceding any election of town, county or state officers, or of representative to congress, and who

shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town of this state; and also every citizen, who shall be by law exempted from taxation, and who shall in all other respects be qualified as above mentioned, shall have a right to vote in all such elections; and no other person shall be entitled to vote in such elections. *R. S. c.* 3, § 1.

The provision of the Revised Statutes is the same with that of the third article in the amendments of the Constitution, except that it extends the qualifications there required, to voters, for town and county officers, and for representatives in Congress. *See Amendments, Art.* 3.

2. The qualifications for voting for electors of President and Vice President of the United States are the same. *R. S. c.* 6, § 13.

3. The same also, for voting on the question, whether any town will send representatives to the general court, and on all questions, relating to the number of representatives, that such town will send. *R. S. c.* 5, § 2.

4. By an analysis of these provisions, we find that the qualification of voters are—

I. Gender.—Males only voting.

II. Citizenship. This may result from birth, or be gained under the naturalization laws of the United States.

III. Age.—The attainment of majority.

IV. Not being under guardianship, nor supported at the public charge.

V. Residence *in the state* for one year and that next preceding the election.

VI. Residence *in the town* for the space of six months, and that next preceding the election.

VII. The payment of a tax by himself, master, or guardian, or exemption from taxation by law. The tax paid must have been;—1. A *state or county tax.* 2. It must

have been *assessed* within two years next preceding the election. 3. It must have been assessed in some town in this state.

No persons are exempted by law from taxation within the meaning of the constitutional provision. *See R. S. c.* 7, § 5. 11 *Pick.* 538. 5 *Met.* 591.

5. The payment of a state or county tax, assessed within two years, by one in other respects a qualified voter is sufficient, although the tax was illegally assessed. 5 *Met.* 162.

6. So if the tax is paid for him by another, without his previous authority, if he recognizes the act, and repays or promises to repay, on the ground that the person paying acted as his agent. *Ib.*

7. The word *resident* as used in our State constitution is synonymous with *inhabitant.* To "remove all doubts concerning the word *inhabitant,*" the constitution declares that "every person for the purpose of electing, &c. shall be considered as an inhabitant in that town where he *dwelleth* or *hath his home.*" *See* 5 *Met.* 588, 1 *Ante. page* 35.

For rules to determine questions of residence or domicil, *See Ante, pages* 35 & 36.

8. Persons residing on lands purchased by or ceded to the United States for navy yards, forts, and arsenals, and when there is no other reservation of jurisdiction to the state than that of a right to serve civil and criminal process on such lands, do not, by residing on such lands, acquire any elective franchise as inhabitants of such towns. 8 *Mass.* 77. *Opinion of the Judges,* 1 *Met.* 580.

9. Persons having the requisite qualifications as to age and residence, but who have been, for two entire years, exempted from taxation by town assessors, either by being omitted to be assessed, or by abatement of the tax, as being unable by reason of age, infirmity or poverty, to contribute towards the public charges, are not entitled to vote. *Opinion of the Judges,* 11 *Pick.* 538. 5 *Met.* 594.

If such exemption has not extended to two years, and if the persons in question have paid any tax assessed within two years, although exempted the last year, such persons have a right to vote. *Ib.*

But it is not in the power of the assessors to omit any persons in the assessment, or to abate their taxes, *against their consent. Ib.*

10. So under the provisions of the Revised Statutes *c.* 7, § 1, and the Statutes of 1843, *c.* 87, exempting persons over seventy years of age from the payment of a *poll* tax, (repealed by Statutes of 1844, *c.* 145,) the judges were of opinion, that, persons who have the requisite qualifications as to residence, but who have been exempted from taxation, on account of their poverty, two successive years before their arrival at the age of seventy years, were not entitled to vote, under the third article of the amendments to the constitution. 5 *Met.* 591.

11. The judges say, in the same opinion, that it is the liability to taxation, not the want of taxable property, which distinguishes citizens generally, from citizens exempted by law from taxation. The exemption by law contemplated by the constitution, is an exemption from all taxation, without any distinction between a poll tax, and any other tax. *Ib.* 595.

12. The selectmen shall, at least ten days before the first Monday of March, and at least ten days before the second Monday of November annually, make out correct alphabetical lists of all the persons, qualified to vote for the several officers, to be elected at those periods, respectively, and shall, at least ten days before the said elections, cause such lists, respectively, to be posted up in two or more public places, in their respective towns. *R. S. c.* 3, § 5.

13. The selectmen shall be in session, at some convenient place, for a reasonable time, within forty-eight hours next preceding all meetings for the elections of any of the

officers aforesaid, for the purpose of receiving evidence of the qualifications of persons claiming a right to vote in such elections, and of correcting the lists of voters; and such session shall be holden for one hour at least on the day of such election, and before the opening of the meeting; and notice of the time and place of holding the said sessions, shall be given by the selectmen, upon the lists posted up as aforesaid. *Ib.* § 6.

14. In any town, where the number of qualified voters shall exceed one thousand, such session of the selectmen shall be holden on the day immediately preceding the meeting, and for as much longer time, previous to said day, as the selectmen shall judge necessary, for the purpose aforesaid; and when the day, immediately preceding such meeting, shall be Sunday, then such session shall be holden on the Saturday next preceding. *Ib.* § 7.

15. At the meetings provided for in the last two sections, the selectmen shall revise and correct the lists of voters, and shall place thereon the name of any person known to them, or shown to be qualified to vote in such elections, and shall erase therefrom the name of any person known to them, or shown not to be qualified to vote therein. *Stat.* 1839, *c.* 42, § 4.

The provisions of the last section shall not apply to any city. *Stat. of* 1839, *c.* 165, § 3.

16. If any person shall give a false name or any false answer to the selectmen, when in session for correcting lists of voters, he shall forfeit the sum of thirty dollars for each offence. *R. S. c.* 3, § 8.

II. MEETINGS FOR ELECTIONS.

1. When to be opened.
2. Not to be held on days designated by law for military duty.
3. For election of state officers, on what days to be held.
4. Adjournment for choice of representatives.
5. For election of representatives to congress and presidential electors when to be held.

6. For election of county officers when.
7. For election of governor and senators must be warned seven days before election.
8. For election of representatives how warned.
9. Selectmen to give notice of mode of voting and of time of opening the polls.

1. All meetings for the election of governor, lieutenant governor, senators and representatives of the Commonwealth, electors of president and vice president of the United States, or of representatives to Congress, may be opened as early as nine o'clock in the forenoon of the day of election, and shall be opened at two o'clock in the afternoon. *Stat.* 1841, *c.* 70.

2. No meeting for the election of state, county or town officers, or of electors of president and vice president of the United States, or of representatives in congress, shall be held on any day, on which the militia of the Commonwealth are by law required to do military duty. *R. S. c.* 4, § 1.

3. The meeting for the choice of governor, lieutenant governor, senators and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November. *Am. of Con. Art.* 10.

4. The Constitution does not admit of an adjournment of the second meeting for the choice of representatives, which it provides for being held on the fourth Monday of November, to a day beyond such fourth Monday. *Opinion of the Judges*, 23 *Pick.* 547.

5. Meetings for the choice of representatives in Congress and electors of president and vice president of the United States are also to be held on the second Monday of November. *R. S. c.* 6, § 33. *Ib.* 14.

In case of no choice in a representative district, or of a

vacancy occurring in the representation, meetings will be held on such days as the executive precept shall direct. *Ib.* § 647.

6. County officers are to be voted as follows, viz :—The treasurer at the annual meeting; the register of deeds at the annual meeting and once in five years; the county commissioners on the first Monday of April and once in three years. *See "Election of County officers."*

7. Meetings for the election of governor, lieutenant governor and senators must be warned seven days at least, before the day of election. *See and compare Constitution, c.* 1, § 2, *Art.* 2, *c.* 2. § 1. *Art.* 3. *Amendments of Same, Article* 10.

8. Meetings for the election of representatives in the general court, shall be notified by the selectmen of each town, in the manner legally established in such town, for calling other town meetings. *R. S. c.* 5, § 5.

9. The selectmen must give notice in their warrants for meetings for the election of state officers, of presidential electors and of representatives in Congress, whether said officers shall be voted for on one ballot, or at the same time on separate ballots, also of the time or times when the polls for the choice of the several officers shall be opened. *See "Mode of conducting Elections."* § 7, 8.

III. MODE OF CONDUCTING ELECTIONS.

1. Who are to preside at elections.
2. Presiding officers to have lists of voters.
3. At certain elections no vote to be received till the name of the voter is checked upon the list.
4. At others selectmen may check names if they see fit.
5. At certain elections no vote to be received unless presented open and unfolded.
6. Governor, &c., may be voted for on one ballot or separate ballots.
7. Selectmen to give notice in warrant of mode of voting.
8. Warrants to specify times when polls shall be opened. Polls how long to be kept open.
9. Provisions as to opening and closing polls in choice of representatives.
10. Provisions of last two sections not to apply to cities.

11. Every vote to be deposited by voter in person.
12. Penalty for voting if not qualified.
13. " for giving in more than one ballot.
14. Penalty for giving false answers to presiding officers.
15. " for aiding or abetting illegal voting.
16. " for disorderly conduct at elections.
17. Selectmen when not answerable for refusing to receive votes.
18. Selectmen may strike names from list, even after opening of meeting.
19. Moderator shall receive votes of persons on the list—may refuse all others.
20. Penalty on selectmen for neglect of duty
21. Liability for refusing votes of qualified voters.
22. Mode of determining result of elections.
23 Election valid though illegal votes are received.

1. At all meetings for the election of governor, lieutenant governor, senators, representatives in the general court, representatives in congress, electors of president and vice president of the United States, and county commissioners, the selectmen shall preside. *Con. c.* 1, § 2, *art.* 2. *Ib. c.* 2, § 1, *art.* 3. *Ib. c.* 2. § 2, *art.* 1. *R. S. c.* 5, § 6. *Ib. c.* 6. § 3. *Ib.* § 16. *R. S. c.* 14, § 17.

At all others a moderator. *R. S. c.* 15, § 26.

2. The selectmen, moderator, or town clerk, at any meeting held for the election of town or other officers, shall be provided with a complete list of the persons qualified to vote at such election, and no person shall vote at any election whose name shall not have been previously placed on such list. *R. S. c.* 4, § 3.

3. At the election for governor, lieutenant governor, senators and representatives of the Commonwealth, electors of president and vice president of the United States, or of representatives in congress, or at any election, for selectmen and town clerk, of any town, or for mayor, aldermen or common council of any city, no vote shall be received until the name of the person offering the same shall have been found upon the list, and checked by the presiding officers, or by some one appointed by them therefor. *Stat. of* 1839, *c.* 42, § 5.

4. No person shall vote at any election till the presiding officer shall have had an opportunity to find the voter's

name on the list. But at elections other than those mentioned in the preceding section, the law does not require the presiding officers to check the names of voters, but leaves it to their discretion. *R. S. c.* 4, § 3. *Stat. of* 1839, *c.* 42, § 5.

5. No vote shall be received at the elections mentioned in the third section unless the same be presented for deposite in the ballot box open and unfolded. The provision of the statute does not, in terms, apply to other elections. *Stat. of* 1839, *c.* 42, § 5.

6. The governor, lieutenant governor, senators, and representatives of the Commonwealth, electors of president and vice president of the United States, and representatives to Congress, may be voted for on one ballot, or at the same time on separate ballots. *Stat. of* 1839, *c.* 42, § 1.

7. The selectmen of the several towns, and the mayor and aldermen of the several cities, shall decide whether said officers shall be voted for on one ballot or at the same time on separate ballots, and shall give notice thereof in the warrant calling the meeting. *Stat. of* 1841, *c.* 70, § 1.

The statute of 1841 leaves in force the provision of the revised statutes requiring that at the elections of senators, each voter shall give in his vote on one ballot, for a number of persons, not exceeding the number of persons to be chosen. *R. S. c.* 4, § 5.

Also the provision relating to electors of president and vice president of the United States. *Ib. c.* 6, § 15.

8. The warrant for notifying a meeting for voting for the officers mentioned in the sixth section, shall specify the time or times when the polls for the choice of the several officers shall be opened; and the same shall be kept open at least two hours, and for such longer time as a majority of the voters present shall by vote direct. *St. of* 1839, *c.* 42, § 2.

9. When a town, having a right to choose and voting to choose more than one representative to the general court, shall elect to choose them separately, the provisions contained in the preceding section, prescribing the time of opening and closing the polls, shall apply only to the choice of the first representative to be thus chosen; and in any case of balloting for a representative to the general court, if no person is elected on the first ballot, the said provisions shall not apply to any subsequent balloting for such representative on the same day: *provided*, that in no case shall the polls at such elections be opened after five o'clock in the afternoon of said day. *Stat. of* 1839, *c.* 42, § 3. *Stat. of* 1843, *c.* 94. *Stat. of* 1844, *c.* 78.

10. The provisions of the last two sections do not apply to cities. *Stat. of* 1839, § 3.

11. No vote shall be received by the presiding officer at any of the elections provided for in this chapter, unless deposited in the ballot box by the voter in person. *R. S. c.* 4, § 4.

12. If any person knowing himself not to be a qualified voter, shall, at any election, wilfully give in a vote, for any officer to be then chosen, he shall forfeit a sum not exceeding one hundred dollars, for each offence. *Ib.* § 6.

13. If any voter shall knowingly give in more than one ballot, at any one time of balloting, at any election, he shall forfeit a sum not exceeding one hundred dollars. *Ib.* § 7.

14. If any person shall wilfully give any false answer to the selectmen or moderator, presiding at any election, he shall forfeit, for each offence, a sum not exceeding one hundred dollars. *Ib.* § 8.

15. If any person shall wilfully aid or abet any one, who is not legally qualified, in voting or attempting to vote at any election, he shall forfeit a sum not exceeding fifty dollars, for every such offence. *Ib.* § 9.

16. If any person shall be disorderly in any meeting held for any election mentioned in this chapter, he shall forfeit a sum not exceeding twenty dollars. *Ib.* § 10.

17. The selectmen, in case they shall have duly entered on said list of voters, the names of all persons who shall have been returned to them by the collectors, shall not be held answerable for any omission in said list, nor for refusing the vote of any person whose name is not borne thereon, unless the person whose name may have been so omitted, shall, before offering his vote, furnish them with sufficient evidence of his having the legal qualifications of a voter at such meeting, and shall have requested them to insert his name on said list. *R. S. c.* 3, § 9.

18. Selectmen have authority even after the opening of a town meeting to strike from the list of voters the name of a person who is not a legal voter. 5 *Met.* 162, 168.

19. The moderator of any town meeting shall receive the votes of all persons whose names are borne on the list of voters, as certified by the selectmen; and he shall in no manner be held answerable, for refusing the vote of any person whose name is not on the said list. *R. S. c.* 3, § 10.

20. If any selectman, or other town or city officer, shall wilfully neglect or refuse to perform any of the duties required of them respecting elections, by the above provisions, they shall, severally, for each offence forfeit a sum not exceeding two hundred dollars. *R. S. c.* 2, § 11.

21. The selectmen are liable for refusing the vote of one legally qualified, even if that refusal is the result of an honest mistake and error of judgment. 11 *Mass.* 350. 12 *Pick.* 485. 23 *Pick.* 309.

Yet in an action where the municipal officers acted in good faith, and the object was to settle a really doubtful right, the jury would take care to give slight damages. 12 *Pick.* 487.

A voter who is challenged at the polls, cannot maintain an action against the selectmen for refusing to receive his vote, if they do not act wilfully or maliciously, but under a mistake into which they are led by his conduct, which was likely to mislead them into a belief, that he had abandoned his claim to a right to vote. 5 *Met.* 162.

22. In order to determine the result of any election in this Commonwealth, the whole number of persons who voted at such an election, shall first be ascertained, by counting the whole number of separate ballots given in; and no person shall be deemed or declared to be elected, who shall not have received a majority of the whole number of ballots; and in all returns of elections, the whole number of ballots given in, shall be distinctly stated; but blank pieces of paper shall not be counted as ballots; and if, at any election, a greater number of candidates, than the number to be elected, shall severally receive a majority of the whole number of ballots, a number equal to the number to be elected of such as have the greatest excess over such a majority, shall be deemed and declared to be elected; but if the whole number to be elected cannot thus be completed, by reason of two or more of such candidates having received an equal number of ballots, the candidates having such equal number shall be deemed not to be elected. *R. S. ch.* 4, § 13.

23. It is not a valid objection to an election, that illegal votes where received, if they do not change the majority. A majority of legal voters who choose to vote, always constitute an election. Whenever electors are present and do not vote at all, they virtually acquiesce in the election. When a majority expressly dissent, but do not vote, the election by the minority is good. 21 *Pick.* 148, 154.

IV. ELECTION AND RETURNS OF ELECTIONS OF STATE OFFICERS.

1. Return of votes for Governor.
2. Lieutenant governor.
3. Senatorial Districts.
4. Return of votes for Senators.
5. Number of votes to be written in words.
6. Returns how kept at secretary's office.
7. Apportionment of Representatives.
8. Towns may be fined for not choosing representatives.
9. Penalty for choosing when not entitled thereto.
10. Votes for, by whom received, sorted, counted, &c.
11. Election to be recorded.
12. Representatives elected, to be notified.
13. Certificate of election to be sent to the secretary's office.
14. Form of certificate.
15. Return on certificate.
16. Penalty on officers for neglect of their duties.

1. GOVERNOR.—The town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for governor, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the meeting; and shall in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days, at least, before the first Wednesday of January, or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth, seventeen days, at least, before the said first Wednesday of January. *See Con. c.* 2, § 1, *Art.* 3. *Amendments of same, Art.* 10. *R. S. c.* 5, § 1.

2. L. Governor.—The declaration and return of votes for Lieutenant Governor, shall be in the same manner, but the list made and sealed up separately. *Con. c.* 2 § 2, *Art.* 1. *R. S, c.* 5, § 1.

3. Senators.—The several senatorial districts now existing, shall be permanent. The senate shall consist of forty members; and in the year one thousand eight hundred and forty, and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhab-

itants in the same. But, in all cases at least one senator shall be assigned to each district. *Amendments of Con. Art.* 13.

4. The selectmen of the several towns shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen, and the town clerk, and shall be sealed up, directed to the secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days, at least, before the first Wednesday of January annually; or it shall be delivered into the Secretary's office, seventeen days, at least, before the said first Wednesday of January .*See Con. c.* 1, § 2, *Art.* 2. *Amendments, Art.* 10.

5. The Revised Statutes direct that the numher of votes for each person, in the above returns, shall be written in words at length against the name. *R. S. c.* 4, § 1.

6. They also direct that when the lists of votes for governor, lieutenant governor, and senators shall be received at the office of the secretary, the seals thereof shall not be broken, but the same shall be kept as they are received, until delivered by him to the two branches of the general court, or to the executive authority. *Ib.*

It would seem, therefore, that the returns for governor and lieutenant governor, ought also to have a "superscription expressing the purport of the contents," otherwise the secretary would be unable to distinguish them from other papers sent to his office.

7. Representatives.—The members of the house of representatives shall be apportioned in the following manner: every town or city containing twelve hundred inhabitants, may elect one representative; and two thousand four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative. *Amendments of Con. Art.* 13.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town. *Ib.*

Such towns may also elect one representative for the year in which the valuation of estates within the Commonwealth shall be settled. *Ib.*

8. The house of representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to the constitution. *Con. c.* 1, § 3, *Art.* 2.

9. If any town shall elect and return a representative to the general court, when it shall not be constitutionally entitled thereto, or shall elect and return a greater number of representatives than it shall be constitutionally entitled to, such towns shall, for each representative, so unconstitutionally elected and returned, forfeit a sum not exceeding three thousand dollars, at the discretion of the court, before which conviction may be had. *R. S. c.* 5, § 4.

10. The selectmen, at the meeting for the choice of representatives, shall openly receive, sort and count the votes given by the qualified voters present, and shall forthwith publicly declare who are the persons elected. *Ib.* § 6.

11. The election shall be recorded in the town records, together with the whole number of votes given in, and the

names of all the persons, for whom they were given. *Ib.* § 7.

12. The selectmen, within three days after such election, shall, either by a constable of the town, or by some other person thereto specially authorized by them, give notice of the choice to the representatives elected. *Ib.* § 8.

13. A certificate and return of such election shall be given under the hands of the selectmen present, and shall be delivered into the office of the secretary of the Commonwealth, or such election shall be certified by the said selectmen to the house of representatives, to their acceptance, on or before the first Wednesday in January of every year. *Ib.*

14. The certificate of such election shall be, in substance, as follows, to wit:

Commonwealth of Massachusetts, county of——. Pursuant to a law of this Commonwealth, the qualified voters of the town of———, in town meeting, on the —— day of———, instant, for the choice of representatives in the general court, did elect————, being an inhabitant of said town, to represent them in the general court, to be holden on the first Wednesday of January next. Dated at———, the —— day of———, in the year one thousand eight hundred and———.

{ Selectmen of
Ib. § 9.

15. The certificate aforesaid shall have a return theron, signed by the constable or other person specially authorized to give such notice, and stating, that notice of the choice was given to the person therein mentioned to be elected, and that said person was summoned to attend the general court accordingly. *Ib.* § 10.

16. If any selectman, or other town or city officer, shall wilfully neglect or refuse to perform any of the duties re-

quired of him under the provisions of this title, he shall forfeit a sum not exceeding two hundred dollars. *Stat. of* 1848, *c.* 240.

V. ELECTION AND RETURNS OF ELECTIONS OF COUNTY OFFICERS.

1. Commissioners to be chosen
2. Time and manner of election, —returns, how made.
3. If no choice, a new election to be had.
4. Vacancies, how to be filled, when the whole are not chosen.
5. In case of a failure on the second trial, to be appointed by the executive.
6. Two special commissioners.
7. Vacancies by death, &c.
8. Commissioners to be of different towns, except, &c.
9. Commissioners to hold office for three years, and may be re-elected.
10. Provision for Suffolk and Nantucket.
11. Meeting for choice of commissioners in Barnstable.
12. Election of county treasurers.
13. Election of registers of deeds.
14. New elections of registers, when to be ordered.
15. Commissioners to furnish blanks.

1. In each of the counties, except Suffolk and Nantucket, there shall be three county commissioners, who shall be elected as provided in the following section. *R. S. ch.* 14, § 16.

2. On the first Monday of April, in the year one thousand eight hundred and thirty eight, and every third year thereafter, in the several towns of each county, except Suffolk and Nantucket, there shall be a meeting of the inhabitants, for the choice of county commissioners; and at such meeting, the qualified voters of each town shall bring in their written votes on one ballot for three county commissioners, being all inhabitants of different towns in the county; and the selectmen shall, in open town meeting, sort and count the votes and the ballots, and make public declaration thereof; and the town clerk shall enter into the town records the names of all the persons voted for, and the number of votes for each, and the whole number of ballots, and shall, within seven days after such election,

transmit a copy of such record, signed by the selectmen and attested by himself, and sealed up in open town meeting, to the clerk of the court of common pleas, who shall transmit the same to the board of examiners. *Ib.* § 17.

3. If, in any county, there shall not be a choice of the three commissioners, the board of examiners shall forthwith issue their warrant to the selectmen of each town in such county, requiring them, on a day therein mentioned, which shall be within twenty days after the issuing of said warrant, to call a meeting of the inhabitants of their town, to elect as many commissioners as shall be necessary to complete the number required for the county; and the said examiners shall furnish the said selectmen with a complete list of the names of all the persons who shall at the first choice have received more than twenty five votes, and shall not have been then elected. *Ib.* § 19.

4. The selectmen of each town, in obedience to the said warrant, shall call a meeting of the inhabitants of their town, and shall lay before them the result of the first choice, as reported to them by the said examiners: and thereupon, the qualified voters aforesaid in such town shall bring in their votes, on one ticket, for the number of commissioners then to be chosen; and the like proceedings, in relation to the election and returns thereof, shall be had on the votes thus given, as are required to be had at the first choice of said commissioners; and the said examiners shall, within eight days after such second choice, examine the returns made to them, and forthwith give written notice of their election to the persons then chosen. *Ib.* § 20.

5. In case of a failure on the second trial in any county to elect one or more of the county commissioners, the board of examiners for said county shall report to the secretary of the Commonwealth the result of the election, and the same facts which by law they are required to report to the selectmen of the towns in such county; and the governor

shall then proceed, by and with the advice of the executive council, to appoint such a number of county commissioners for such county as may be necessary to complete the number of commissioners for such county required by law, such appointment to be confined to those persons not elected, who shall have had the greatest number of votes, being at the same time twice the number of commissioners to be appointed. *Stat. of* 1841, *c.* 107, § 1 *&* 2.

6. In each of the counties, in which county commissioners are to be chosen, there shall also be two special commissioners, who shall be chosen at the same time and in the same manner with the said county commissioners. *R. S. ch.* 14, § 21.

In case of a failure to elect special commissioners on a second trial, they are to be appointed by the executive in the same manner as county commissioners. *Stat. of* 1842, *c.* 50.

7. Any vacancy, in the office of the county commissioners, or special commissioners, by death, resignation, or otherwise, may be filled in the manner prescribed for the elections of those officers; and such vacancy shall be filled at any time, when the said board of examiners shall think it expedient, and shall issue their warrant thereof; and each person, chosen to fill such vacancy, shall hold the office for the residue of the term, for which his predecessor was elected. *R. S. ch.* 14, § 22.

8. Of the said county commissioners, and special commissioners, in all the counties except Duke's county, not more than one shall be chosen from the same town; and in case more than one county commissioner, or special commissioner, from the same town, shall have a majority of the ballots, the person having the largest number, shall be declared to be elected. *Ib.* § 23.

9. The said county commissioners and special commissioners, except such as may be chosen to fill vacancies,

shall hold their respective offices for the term of three years, and until others shall be chosen and qualified in their places: and the same persons may be re-elected from term to term. *Ib.* § 24.

10. In the county of Suffolk the Mayor and Aldermen of Boston and in the county of Nantucket the Selectmen of Nantucket are to discharge the duties of county commissioners. *R. S. c.* 14, § 29, & 30.

11. The inhabitants of the several towns in the county of Barnstable shall hereafter hold their meetings for the choice of county commissioners, on such day during the month of February, not less than eight days before the second Monday of March, as shall be determined by the selectmen of such towns for the time being; and the meetings of the board of examiners for said county shall be held on the second Monday of March. *St. of* 1840, *c.* 1.

12. There shall be chosen annually, at the annual meetings of the several towns, in each county, except Suffolk and Nantucket, by written votes of the qualified voters, a suitable person, being resident in the same county, to be the county treasurer. *R. S. ch.* 14, § 43.

At the election of county treasurer, the votes shall be sorted, in open town meeting, by the moderator thereof and the town clerk; the names of the persons voted for, and the number of votes which each person had, shall be recorded by the clerk in the town records, and an attested copy of such record shall be transmitted, under seal, to the county commissioners, at their next ensuing meeting, there to be opened and compared with the like returns from the other towns of such county; and the person, who shall thereupon be found to have the majority of the said votes, and who shall accept the said office, shall be declared to be the county treasurer. *Ib.* § 44.

13. At the annual meetings of the several towns, in each county, in the year one thousand eight hundred and

thirty six, and every five years afterwards, the inhabitants of said towns, qualified to vote for representatives in the general court, shall elect registers of deeds; each of whom shall hold his office for five years, and until some other person shall be chosen and qualified in his stead, unless he shall be sooner removed from office, by order of the county commissioners, for misconduct in the discharge of his duty. *Ib.* § 101.

The town clerk of each town shall record the names of the persons voted for, and the number of votes each person had, for register of deeds, and shall transmit an attested copy of such record, under seal, to the county commissioners, in season to be opened on the first day of their next stated meeting. The commissioners shall then count the votes received from the several towns, and give notice, to the person having a majority of all the votes, of his election to the office of register of deeds. *Act of Amendment,* § 3.

14. Whenever a vacancy shall happen in the office of register, or in case no choice shall be made at any trial, the commissioners shall forthwith issue notices to the several towns of the county, or registry district, respectively directed to the selectmen of such towns, and requiring them to notify a meeting of the legal voters of their towns, for the purpose of electing a register, and such notice to the selectmen shall prescribe the day and hour when such meetings shall be held, and the time and place of making returns to the said commissioners of the number of votes and the names of the persons voted for; provided that the time of making such returns shall never exceed thirty days from the date of such notices. *Ib.* § 8.

15. It shall be the duty of the county commissioners of the several counties, previous to the month of March, annually, to furnish the clerks of the several towns in their respective counties, blank returns in due form, for the re-

turn of the elections of all county officers which are to be elected by the people that year. *St.* 1841, *c.* 126.

VI. ELECTION AND RETURNS OF ELECTIONS OF REPRESENTATIVES TO CONGRESS, AND PRESIDENTIAL ELECTORS.

1. State divided into ten congressional districts.
2. Congressional districts
3. Representatives in Congress to be chosen on the second Monday of November biennially.
4. Selectmen to seal up and transmit the votes to the sheriff or secretary.
5. Proceedings in case there is no choice.
6. " when vacancies happen.
7. Choice of electors of President and Vice President when to take place.
8. Names of all the electors to be on one ballot, &c.
9. Selectmen to preside.—List of votes to be certified.
10. Time and manner of transmitting the votes.
11. All duties of town officers in election of governor, &c. to be observed in the election of electors. —Penalties.

1. For the purpose of electing representatives in the twenty eighth Congress of the United States, and in each subsequent Congress, until otherwise provided by law, the Commonwealth shall be divided into ten districts, each of which shall elect one representative, being an inhabitant of the same district, in the manner now provided by law. *St. of* 1842, *c.* 99, § 1.

2. For the cities and towns comprising the different congressional districts, *See Stat. of* 1842, *c.* 99, § 2.

3. The selectmen of the several towns shall, in the manner directed by law for holding elections therein, cause the inhabitants of said towns, duly qualified to vote for representatives in the general court, to assemble on the second Monday of November, to give in their votes for representatives in congress; and at such meetings, the selectmen shall preside, and shall, in open town meeting, receive, sort, and count the votes, and shall form a list of the names of the persons voted for, with the number of votes for each person, written in words at length, against his name; and

the town clerk shall make a record thereof. *R. S. c.* 6, § 3.

4. The selectmen shall, in such meetings, make public declaration of the persons voted for, and of the number of votes given for each; and shall, in open town meeting, certify and seal up the said lists, and shall express, on the outside thereof, the district in which the said votes were given, and transmit the same, within three days after the election, to the sheriff of the county; and the said sheriff shall transmit the same to the office of the secretary of the Commonwealth, within seven days thereafter; or the said selectmen may themselves transmit the same to the said office within ten days after the election; and, in case of a vacancy in the office of sheriff in any county, the selectmen of the several towns therein shall return such lists to the secretary's office, within the said term of ten days. *Ib.* § 4.

5. In case of no choice in a congressional district, the governor shall cause precepts to issue to the selectmen of the several towns, within such district, directing them to cause the qualified electors of their respective towns, to assemble on the day appointed in such precept, to give their votes for a representative in congress; and the said precept shall be accompanied with a list of all the persons voted for in such district, who shall have received as many as fifty votes according to the next preceding return, and shall show the number of votes for each of such persons; and the same proceedings shall be had thereon, and the same returns made in all respects, as before directed; and the like proceedings shall be repeated, as often as occasion may require. *Ib.* § 6.

6. When any vacancy shall happen in the representation of this Commonwealth in congress, the governor shall cause precepts to issue, for a new election in the congressional district, where such vacancy exists; and the like proceedings in all respects shall be thereon had, from time

to time, as are provided for the election of representatives. *Ib.* § 7.

7. The selectmen of the several towns shall, in the manner prescribed by law for notifying town meetings, cause the inhabitants of their respective towns, qualified to vote for representatives in the general court, to assemble on the Tuesday next after the first Monday of November of the year when the election of president and vice president is to be made, and give in their votes for the whole number of electors to which this commonwealth may be then entitled. *Ib.* § 14. *Stat. of* 1848, *c.* 35.

8. The names of all the electors to be so chosen, shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each congressional district into which the Commonwealth shall be then divided; and against the name of each person, on every such ballot, shall be designated the congressional district to which he belongs. *Ib.* § 15.

9. The selectmen shall preside at all meetings held for the choice of electors aforesaid, and shall in open town meeting receive, sort, count and declare the votes given in; and the same shall be recorded by the town clerks, respectively, and exact lists thereof shall be made and certified by the selectmen and clerk. *Ib.* § 16.

10. The mayor and aldermen of the several cities, and selectmen of the several towns in the Commonwealth, shall within three days next after the day of any election of electors of president and vice president of the United States, held by virtue of the laws of this Commonwealth, or of the United States, deliver, or cause to be delivered the lists of votes therefor, sealed up, to the sheriff of the county in which said election is held, and the sheriff shall within four days after receiving said lists, transmit the same to the office of the secretary of the Commonwealth, or the said mayor and aldermen, or the selectmen may,

and when the office of sheriff is vacant, he or they shall themselves transmit the said lists to the said office within seven days after the election, and all votes not so transmitted shall be rejected. *Stat. of* 1844, *c.* 167, § 1.

11. All laws in force, in relation to the duties of town officers and voters, in the election of governor, counsellors, senators and representatives of this Commonwealth, shall, as far as the same may be applicable, apply, and be in force, in regard to the meetings and elections to be held, and the returns to be made, under the provisions of this chapter, respecting the choice of electors of president and vice president of the United States; and the like penalties shall be incurred for the violation thereof. *R. S. c.* 6, § 24.

FENCE VIEWERS AND FENCES.

1. Fence viewers, how chosen and qualified.
2. Penalty for neglect of duty.
3. Fees of fence viewers.
4. What is a legal fence.
5. Adjoining occupants shall maintain partition fences equally.
6. Partition fences to be kept in good repair throughout the year, unless, &c.
7. Proceedings when a party neglects, &c.
8. Remedy against adjoining owner, for repairing his deficient fence.
9. What notice to, by fence viewers, sufficient.
10. An occupant bound to maintain partition fence, may place half of it on adjoining enclosure, &c.
11. Remedy in eighth section not applicable where there is an agreement between parties.
12. Adjoining owner must have notice of appraisement by fence viewers.
13. Controversies about repairing, how determined.
14. Remedy when party refuses to erect the portion of fence assigned to him
15. Compensation for repairing more than a just share of partition fence.
16. Partition fence, how made when lands are bounded by water.
17. Same subject,
18. What to be done when either party refuses to maintain his portion of such fence.
19. When a water fence is necessary, how made.
20. What is not a water fence.
21. When lands have been occupied without partition fences, a division may be made.
22. Same subject.
23. When one party lays open enclosed lands, the other may purchase a right in partition fence.
24. When unenclosed lands are afterwards enclosed, &c., the party benefited shall pay, &c.
25. Same subject.
26. Fence viewers, whence taken, when partition fences are on town lines.
27. Fences to be maintained con-

formably to agreement of parties or assignment of fence viewers, by owners, their heirs, and assigns.
28. But one party may lay his lands common, by giving notice
29. A party may be bound by prescription to maintain fence, &c.
30. The statutes repecting fences, do not affect contracts or rights between parties, existing independently of the statutes.
31. Where a party may sustain trespass against the owner of adjoining lands.
32. Apportionment of fence around general fields.
33. Record of such apportionment to be made, and how.
34. Proprietors who do not improve, not obliged to maintain fence.
35. Expense of apportioning said fence, how borne.
36. Proceedings when any part of fence assigned is deficient.
37. Party neglecting to repair, liable to double damages.
38. Liability to repair, in case of sudden destruction, &c., of fences.

1. Fence viewers are to be chosen at the annual meeting, in such mode as the meeting shall determine, and are to be sworn to the faithful discharge of the duties of their office *R. S. c.* 15, § 33 & 34.

2. Any fence viewer, duly chosen and sworn, who shall, when requested, unreasonably neglect to view any fence, or to perform any other duties required of him in this chapter, shall forfeit the sum of five dollars to the use of the town, and moreover be liable for all damages to the party injured. *Ib. c.* 19, § 17.

3. Each fence viewer shall be paid, by the person employing him, at the rate of one dollar a day, for the time he shall be so employed; and if said person shall neglect to pay the same, within thirty days after the service shall have been performed, each of the fence viewers may recover, in an action of the case, double the amount of such fees; and each of them may be a witness for or against the other. *Ib.* § 18.

4. All fences, four feet high and in good repair, consisting of rails, timber, boards, or stone walls, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same shall lie, shall be deemed legal and sufficient fences. *Ib.* § 1.

5. The respective occupants of lands enclosed with fen-

ces, shall keep up and maintain partition fences, between their own and the next adjoining enclosures, in equal shares, so long as both parties continue to improve the same. *Ib.* § 2.

6. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree. *Ib.* § 8.

7. In case any party shall neglect or refuse to repair or rebuild any partition fence, which, of right, he ought to maintain, the aggrieved party may complain to two or more fence viewers of such town, who, after due notice to each party, shall proceed to survey the same, and if they shall determine that the fence is insufficient, they shall signify the same, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same, within such time as they shall judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to make or repair the deficient fence. *Ib.* § 3.

8. When any deficient fence, built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient, by two or more of the fence viewers, and the value thereof, together with their fees, ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the occupant or owner of the land, where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due, for one month after demand made, the complainant may recover the same, with interest at one per cent. a month, in an action for money laid out and expended. *Ib.* § 4.

9. When a division fence was partly in one town and partly in another, and notice was given by fence viewers to one of the parties, of the deficiency of the fence, but without stating in what town the portion of the fence ad-

judged by them to be deficient was situated, or in what capacity they acted; it was held that the notice was insufficient, and that the plaintiff could not recover according to the provisions of the preceding section. 15 *Pick.* 123.

10. An occupant of land who is bound to maintain a fence between his own and an adjoining enclosure, may place half of a fence, of reasonable dimensions, on the land of an adjoining owner; and he may cut half of a ditch, on the land of such owner, where a ditch is proper for a partition fence. 2 *Met.* 180.

11. An agreement between tenants, making a division of the fence, each one mutually undertaking to repair his part, will not authorize one tenant, who had made or repaired the fence of the other, on his refusal, to recover of him double the expense, as in the case of an assignment by fence viewers pursuant to the statute; but his remedy is on the agreement. 6 *Mass.* 90.

12. Before the appraisement provided for in the eighth section shall be made, notice should be given to the party whose fence has been repaired, of the time and place of the appraisement of such fence by the fence viewers; and if such notice is not given, the action for damages cannot be maintained. 14 *Pick.* 276. 11 *Met.* 496.

13. When any controversy shall arise, about the rights of the respective occupants in partition fences, and their obligation to maintain the same, either party may apply to two or more fence viewers of the towns where the lands lie, who after due notice to each party, may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment, being recorded in the town clerk's office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective parts of said fence. *R. S. c.* 19, § 5.

14. In case any party shall refuse or neglect to erect and maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by any aggrieved party, in the manner before provided; and he shall be entitled to double the value thereof, ascertained in the manner aforesaid, and to be recovered in like manner. *Ib.* § 6.

15. When, in any controversy that shall arise between adjoining occupants, as to their respective rights in any partition fence, it shall appear to the fence viewers, that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay, for so much as may be assigned to him to repair or maintain, the value thereof, to be ascertained and recovered in the manner provided in this chapter. *Ib* § 7.

16. When lands of different persons, which are required to be fenced, are bounded upon or divided from each other, by any river, brook, pond or creek, which, of itself, in the judgment of the fence viewers, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence, on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the town or towns wherein such lands lie, on application to them made, shall forthwith view such river, brook, pond or creek. *Ib.* § 9.

17. If the fence viewers shall determine the same not to answer the purpose of a sufficient fence on the true boundary line, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the

fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce such their determination to writing. *Ib.*

18. If either of the parties shall refuse or neglect to make and maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained, as is before provided in this chapter, and the delinquent party shall be subject to the same costs and charges to be recovered in like manner. *Ib.*

19. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and, in case either party shall refuse or neglect to make or maintain the share to him belonging, similar proceedings shall be had, as in other cases of the like kind, respecting other fences before mentioned. *Ib.* § 14.

20. A partition fence on land that is covered, a part of the year, with the waters of an artificial mill pond, but is used and occupied as pasture or mowing land, is not a water fence within the meaning of the last four sections. 11 *Met.* 496.

21. When any lands, belonging to two person in severalty, shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line, when divided, the party desiring it may have the same divided and assigned, by two or more fence viewers of the same town, in the manner provided in this chapter; and the fence viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making the fence. *Ib.* § 10.

22. If the occupant complained of shall not make his

part of the fence, within the time so assigned, the other party may, after having made up his own part of the fence, make up the part of the other, and recover double the expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter. *Ib.*

23. When one party shall cease to improve his land, or shall lay open his enclosure, he shall not take away any part of the partition fence belonging to him, and adjoining to the next enclosure, provided the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers shall, in writing, determine to be the reasonable value of such partition fence. *Ib.* § 11.

24. Whenever any land, which has lain unenclosed, shall afterwards be enclosed, or shall be used for depasturing, the occupant or owner thereof shall pay, for one half of each partition fence, standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof, to be ascertained, in writing, (in case they shall not agree between themselves,) by two or more of the fence viewers of the same town, wherein such partition fence stands. *Ib.* § 12.

25. In case such occupant or owner, after the value has been so ascertained, shall neglect or refuse, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain, in form aforesaid, an action for such value, and the costs of ascertaining the same. *Ib.*

26. In all cases where the line, upon which a partition fence is to be made, or to be divided, is the boundary line of one or more towns, or partly in one town and partly in another town, a fence viewer shall be taken from each town. *Ib.* § 13.

27. In all cases where a division of fence, between the owners of improved lands, has been or shall be made, either by fence viewers, or by an agreement in writing between

the parties, recorded in the office of the clerk of the town wherein such lands are situate, the several owners of such lands, and their heirs and assigns, forever, shall erect and support said fence, agreeably to such division. *Ib.* § 15.

28. But if any person shall lay his lands common, and determine not to improve any part of the same, adjoining the fence that may have been divided as aforesaid, and shall give six months' notice of his determination to all the adjoining occupants of land, he shall not be required to keep or support said fence, during the time that his lands shall so lie common and unimproved. *Ib.*

29. Prescription to fence is allowed at common law, as resulting from an original grant or agreement, the evidence of which is lost by lapse of time.

Prescription may be proved by ancient usage. 6 *Mass.* 97.

A man may be bound by prescription to maintain a fence for the benefit of another, as well as himself. 5 *Pick.* 505.

30. The laws respecting fences do not interfere with contracts or rights existing independently of the statute. 2 *Dane's Ab.* 660. 5 *Pick.* 505.

The object of the statute was to establish the rights and obligations of tenants of adjoining occupied closes, respecting the making and maintaining of partition fences; the rights of persons not having any interest in either of the adjoining closes, remain unaffected by the statute, and are to be defined and protected by the common law. 6 *Mass.* 98.

31. When a party is not bound, by prescription, agreement, or assignment of fence viewers, to maintain a fence between his land and that of an adjoining owner, he may maintain an action of trespass *quare clausum fregit*, against the adjoining owner, when cattle escape into his land. The common law on this point is not altered by the statutes of this commonwealth. 4 *Met.* 589.

32. When several distinct lots or pieces of land are en-

closed or fenced in one common field, or when all the proprietors of such lands shall agree to enclose them in that manner, the whole fence enclosing such general field shall, so far as it may be found convenient, be apportioned among the proprietors, according to the number of acres held and cultivated, or otherwise used, by each one. *R. S. c.* 43, § 29, 28.

33. The part, to be maintained by each proprietor, shall be set out and assigned to him, by any two or more fence viewers, unless the proprietors shall agree on an apportionment of the fence among themselves: and in all cases, the proportion of fence, so assigned to each proprietor, shall be recorded by the clerk in the books of the proprietors, and, where there is no such clerk, the said record shall be made by the clerk of the town in which such general field is situated. *Ib.* § 28.

34. If any proprietor of land in such general field shall decline to cultivate his land, or to use it for pasturing, for the growth of wood, or otherwise, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land, so long as he shall decline to cultivate or use it as aforesaid. *Ib.* § 29.

35. The expense of apportioning the fence, and also of making and maintaining such part thereof as cannot be conveniently and justly assigned to any one proprietor, shall be borne by all the proprietors who are liable to be taxed, in proportion to their respective interests; and the part assigned to each proprietor shall be made and maintained by himself, so long as he shall use his part of the said general field of pasturing, planting, mowing or otherwise. *Ib.* § 30.

36. If the part of the fence assigned to any proprietor shall become deficient, and if he shall not repair it within three days after notice of such deficiency, given to him by a fence viewer of the town, it may be repaired by any oth-

er of the said proprietors; and such repairs may be examined by any two or more fence viewers, and if adjudged by them to be sufficient, they shall ascertain and determine the cost of the repairs, and make a statement thereof, and of the amount of their fees, in writing, under their hands. *Ib.* § 31.

37. The person making such repairs may demand, of the proprietor who was bound to make the same, or of the tenant holding under him, double the cost of the repairs and of the fees of the fence viewers, ascertained as aforesaid; and if the same is not paid within one month after notice and demand thereof, he may recover the same in an action on the case. *Ib.* § 32.

38. If any part of the fence shall be suddenly blown down, or carried away by any flood or tempest, at a time when the crops of grain or grass in the field shall be thereby exposed to immediate destruction or injury, the proprietor, to whom that part of the fence was assigned, shall be bound to repair the same, within twenty four hours after notice thereof given to him by a fence viewer; and if he shall fail so to do, the fence may be repaired by any other proprietor, and such proprietor may recover double the cost of the repairs and fees, in the same manner as is provided in the preceding section. *Ib.* § 33.

FIELD DRIVERS, AND IMPOUNDING AND DISTRAINING CATTLE.

1. Field Drivers, how chosen and qualified.
2. Duty of field drivers to take up cattle.
3. Fees of field drivers and pound keepers to be paid by owners.
4. Pound keepers to provide for beasts.
5. Fees of pound keepers.
6. Field drivers can impound cattle going at large on Sunday.
7. " " when bound to leave memorandum with pound keeper.
8. Turnpike road is a highway within the meaning of the statute.
9. Fees of field drivers.
10. Towns to maintain pounds.

11. Penalty on towns for neglecting to maintain pounds.
12. Pound keepers to be appointed.
13. Damages may be recovered against owners for injury done by beasts.
14. Same subject.
15. The owners of a close not obliged to fence except, &c.
16. Public cannot turn cattle upon highway to graze.
17. Beasts, distrained for doing damages, to be impounded.
18. Person distraining to state his demand.
19. Beasts, not to be delivered, until all costs and charges are paid.
20. Notice to be given to the owner or keeper.
21. Where owner cannot object to want of notice.
22. Notices in certain cases to be posted up.
23. " " " to be published.
24. The sum due to the owner how to be determined.
25. Same subject.
26. If not paid, the beasts to be sold.
27. Sale, made less than twenty four hours after appraisement, is void.
28. Proceeds of sale, how disposed of.
29. Beasts escaped or rescued may be retaken.
30. Penalty for rescuing beasts distrained.
31. The legality of a distress to be tried by an action of replevin.

1. FIELD drivers are to be chosen at the annual meeting in such mode as the meeting shall determine, and are to be sworn to the faithful discharge of the duties of their office. *R. S. c.* 15, § 33 & 34.

2. Every field driver, within his town, shall take up, at any time, any swine, sheep, horses, asses, mules, goats or neat cattle, going at large in the public highways, or town ways, on common and unimproved lands, and not under the care of a keeper, and shall forthwith impound them in the town pound, and, for any such cattle or beasts, so going at large on the Lord's day, the field driver or any other inhabitant of the town may recover, by an action of debt, for each beast, the same amount of fees, which the field driver is entitled to receive for the like beasts, when distrained and impounded. *Ib. c.* 19, § 22.

3. The pound keeper shall not deliver to the owner any beasts so impounded, until the owner shall pay him his fees and the expense of keeping the beasts, and also the fees due to the field driver, which latter, when received, he shall pay to the field driver. *Ib. c.* 113, § 3.

4. The pound keeper shall furnish any beasts, impound-

ed by any field driver, with suitable food and water, so long as they are detained in his custody. *Ib.* § 1.

5. The pound keeper shall be entitled to four cents per head for all animals impounded, but if more than ten sheep are taken up at the same time, the fees for all above that number shall be two cents per head. *Ib.* § 2.

6. A field driver is authorized to impound cattle so going at large on Sunday, the action of debt to which the owner is subjected being only a cumulative remedy. 23 *Pick.* 251.

7. In the same case, Wild *v.* Skinner, the court decided that the field driver was not bound under the eighteenth section of this title to leave with the pound-keeper a memorandum, stating the cause of impounding and the damages or fees demanded, this being requisite only where cattle are taken doing damage. 23 *Pick.* 254.

This decision however seems to be in direct conflict * with the case of Bruce v. Holden, in which the court say that it is "the duty of a field driver" who had impounded cattle going at large on the highway, to file with the pound-keeper a memorandum or certificate of the cause of impounding, and of his fees and expenses, and that such certificate was official and *prima facie* evidence of the truth of the facts stated in it. 21 *Pick.* 187, 192.

8. A turnpike road is a highway within the meaning of the law restraining cattle. 4 *Pick.* 258.

9. The field driver shall be entitled to fifty cents per head for all horses, asses, mules and neat cattle, and ten cents per head for all sheep, goats and swine, so distrained by him; but if more than ten sheep are taken up at the

* The cases cannot be reconciled by a distinction between *fees* and *damages*, for in both cases the question arose as to memorandum of fees. Indeed the field driver impounding cattle going at large on the highway has no claim for damages. Though the decision of Wild *v.* Skinner, is the later one, the safer course for the field driver will be to leave the memorandum of the cause of impounding and of his fees with the pound-keeper.

same time, the fees for all above that number shall be only five cents per head. *R. S. c.* 113, § 2.

10. Each town shall, at its own expense, and in such places therein as the inhabitants shall direct, maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle may be restrained and kept. *Ib. c.* 19, § 19.

11. Every town that shall, for the space of three months, neglect to maintain a sufficient pound, shall forfeit the sum of fifty dollars, to the use of the county in which such town is situated. *Ib.* § 20.

12. Each town shall annually appoint a suitable person, to be the keeper of each pound therein, and in such mode as the town meeting shall determine. *Ib.* § 21.

13. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, he may recover his damages in an action of trespass against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as herein after directed. *Ib.* § 4. 18 *Pick.* 422.

14. If the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom in consequence of the neglect of the person who has suffered the damage, to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage. *Ib.*

15. The owner of a close is not obliged to fence but against the escape of cattle lawfully in the adjoining ground, and if all his fence be insufficient, yet if the cattle do not escape into his close through the insufficient fence, but are turned in or escape through a deficient fence of an intermediate close not belonging to him, he may lawfully distrain the cattle doing damage. 6 *Mass.* 90.

16. The public have no rights in a highway but a right to pass and repass thereon. They cannot therefore turn their cattle thereon, for the purpose of grazing. And if

cattle on the highway for the purpose of grazing escape into the adjoining land, the owner of the land may maintain trespass, or distrain, although the land was unfenced. 16 *Mass.* 33.

The owner of the land, however, takes the hazard of cattle lawfully passing the road, running upon his land, and casually and "*snatchingly*," against the will of the driver, devouring his crops. 16 *Mass.* 33. 18 *Pick.* 422.

17. The beasts so distrained for doing damage shall be impounded either in the town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water, so long as they remain impounded. *R. S. c.* 113, § 5.

18. If the beasts are impounded, in the town pound, the distrainer shall leave with the pound keeper a memoradum in writing, under his hand, stating the cause of impounding, and the sum that he demands from the owner, for the damage done by the beasts, and also for the daily charges of feeding them; and if they are impounded in any other place, he shall give a like memorandum to the owner of the beasts, if demanded by him. *Ib.* § 6.

19. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner, until the owner shall pay him his fees, together with the sum so demanded by the distrainer, for the damages and charges aforesaid, and the expense of advertising the beasts if they are advertised, and all other legal costs and expenses. *Ib.* § 7.

20. When beasts are impounded, the person impounding, shall within twenty-four hours thereafter give notice in writing, to the owner or the person having the care of them, if known, and living within six miles from the place of impounding, which notice shall be delivered to the party, or left at his place of abode, and shall contain a de-

field driver, or other person who distrained them, may, at any time within seven days thereafter, retake the beasts, and hold and dispose thereof, as if no such escape or rescue had taken place. *Ib.* § 14.

30. If any person shall rescue any beasts, lawfully distrained or impounded, for any cause whatever, he shall be liable in an action on the case, to be brought by any person injured, to pay all damages which such person shall have sustained thereby, and all the fees and charges, that shall have been incurred before the rescue; and he shall moreover forefeit a sum not less than five, nor more than twenty dollars, to be recovered by complaint, before a justice of the peace or police court. *Ib.* § 15.

31. The defendant in any action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance, to show that the distress or impounding was illegal; but if there is any such ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof, in an action of replevin. *Ib.* § 16.

FIRE DEPARTMENT.

I. ENGINEMEN.

1. How appointed.
2. Number to each engine.
3. Hook and ladder men, &c. to be appointed.
4. Selectmen to appoint enginemen to private engines.
5. If selectmen refuse, county commissioners may appoint.
6. Enginemen to live near engines.
7. " may be removed for negligence in discharge of duty.
8. Enginemen exempted from certain duties.
9. " to meet in the month of May to choose officers and make by-laws.
10. " to meet monthly &c.
11. " who have served a year, to have allowance from their towns.
12. Commanding officers of Engines, &c. to make out and certify lists of enginemen for assessors—

assessors to examine and certify lists to town treasurer—treasurer to pay,—remedy if he refuses.
13. Penalty for refusing to make certificate, or making a false one.
14. The three preceding sections not to apply, unless adopted by towns.
15. Penalty for injuring fire engines.

1. The selectmen of such towns, as are or may be provided with one or more fire engines, shall, if they judge it expedient, appoint a number of suitable persons, as provided in this chapter, for enginemen; who shall continue in said office during the pleasure of the selectmen. *R. S. c.* 18, § 9.

2. The public fire engines in the several towns shall be manned by the number of persons and in the manner here following: to each common fire engine, there shall be appointed a number not exceeding thirty men; and to each hydraulion, or suction fire engine, a number not exceeding forty five men; and whenever said suction engines shall be suffered to go out of repair, and be used as common engines only, the said number of forty five men shall be reduced to the number of thirty; but this provision shall not affect the right, now existing in any city or town, to have a greater number of enginemen appointed, than is herein prescribed. *Ib.* § 10.

3. The selectmen may, in their discretion, select from the enginemen, any number for each engine in their respec tive towns, whose duty it shall be, under the direction of the firewards, to attend fires with axes, fire-hooks, fire-sails and ladders, and to do such farther duty, as the said selectmen shall from time to time prescribe; and they shall be entitled to all the exemptions and privileges contained in this chapter. *Ib.* § 11.

4. Whenever the proprietors of any engine shall apply to the selectmen of a town, in which the said engine is owned, setting forth that they are desirous that the same should be employed for the benefit of the town, the selectmen may appoint enginemen in the same manner, with the same privileges, and subject to the same regulations, as in

the case of engines belonging to the town; and in case the said proprietors shall not agree upon the place in which such engine shall be kept, such place shall be determined by the selectmen. *Ib.* § 14.

5. If the selectmen, when applied to as provided in the preceding section, shall refuse or delay, for the space of fourteen days, to appoint enginemen for any such engine, the said proprietors may apply therefor in writing to the county commissioners of their county; giving notice in writing to said selectmen, seven days at least before the siting of said commissioners, that the aforesaid selectmen may appear and show cause, if any they have, why said enginemen should not be appointed; and if sufficient cause should not be shown by said selectmen, the said commissioners may appoint such a number of enginemen, as is directed in this chapter, for each public engine. *Ib.* § 15.

6. The enginemen appointed as provided in the two preceding sections, shall, if such can be obtained, be persons who live at or near the place where the engine is kept; and said enginemen shall enjoy all the privileges and exemptions, to which other enginemen are, or may hereafter be by law entitled. *Ib.* § 16.

7. If any engineman shall, in the opinion of the selectmen, be negligent in the duties required of him, the selectmen shall, upon sufficient evidence thereof, discharge him and appoint another engineman in his stead. *Ib.* § 18. *See Firewards*, 6.

8. When any member of a volunteer company shall be afterwards appointed an engineman, or member of the fire department, it shall not vacate his enlistment, but, during its continuance, shall exempt him from duty. *R. S. ch.* 12, § 2.

Upon ceasing to be an engineman, the liability of a member of a volunteer company to do his duty in such company revives, if his term of enlistment has not expired,

nor is this liability affected by his enlisting while so exempted in another volunteer company, and receiving a non-commissioned officer's warrant therein. 3 *Pick.* 226.

If one, while an engineman, enlists into a volunteer company, he waives his right of exemption from duty. 14 *Mass.* 37.

All members of the fire department in the city of Boston, shall be exempted from serving as jurors; and all enginemen and members of the fire departments in other towns shall be exempted by their respective towns, by vote at any legal town meeting. *R. S. ch.* 95, § 3.

Enginemen are also exempted from serving as constables. *R. S. ch.* 18, § 17.

9. The enginemen of each engine shall meet in the month of May annually; and at such meeting, shall choose a foreman, or director, and a clerk of the said engine, and establish such rules and regulations, respecting their duty as enginemen, as shall be approved by the selectmen, and shall not be repugnant to the laws of the Commonwealth; and they shall annex penalties thereto, not exceeding ten dollars, which may be recovered by the clerk of said enginemen. *Ib.* § 12.

10. The respective companies of enginemen, nominated and appointed as aforesaid, shall meet together once a month, and oftener, if necessary, for the purpose of examining the state of the engine to which they belong, and the appendages of the same, and to see that the said engine is in good repair, and ready for use; and the said enginemen shall, by night and by day, under the direction of the firewards, use their best endeavors to extinguish, without delay, any fire that may happen in the same town or the vicinity thereof. *Ib.* § 13.

11. All persons duly appointed enginemen for any fire engine, and all persons duly appointed members of the fire department established in any town, and who shall have

done duty as such, for the space of one year preceding the first day of May, in each year, shall be entitled to receive from the treasurers of their respective towns, a sum equal to the poll tax to the state, county and towns (exclusive of highway taxes,) which may have been paid by such persons, or by their parents, masters, or guardians. *Ib.* § 19.

12. The chief engineer, or the officer who holds by law the first office in any fire department, and the foreman or commanding officer of each fire engine, in any town, where no fire department is established by law, on or before the first day of May, in each year, shall make out and certify, to the assessors of their respective towns, a list of all persons in their department and companies respectively, who, through the year preceding, have performed all the duties therein required by law; and the assessors shall, within ten days thereafter, examine said lists, and certify to the treasurers of their respective towns the amount to be paid to each person named therein; and the said treasurers shall, after deducting all taxes due from the persons so named, pay the same to them, or, if minors, to their parents, masters, or guardians; and upon refusal of the treasurer to pay, the persons entitled may severally have an action for money had and received, to recover the same from such towns; but no town shall be liable as aforesaid, unless the list above prescribed shall have been duly certified, and returned to the assessors of such town, in the manner aforesaid. *Ib.* § 20.

13. If any chief engineer or other officer, required to make a certificate to the assessors, as provided in the preceding section, shall wilfully refuse to make such certificate, he shall forfeit to the use of each person, whose name ought to have been so certified, a sum not exceeding five dollars; and if such engineer or other officer shall make a false certificate in such case, he shall forfeit to the use of

the town a sum not exceeding fifty dollars nor less than twenty dollars. *Ib.* § 21.

14. The provisions of the three preceding sections shall not take effect in any town or city, until the same shall be adopted and approved by the town, at their annual town meeting, or by the city council, of such city; and when such approval shall be revoked by the town, at any annual meeting, or by the said city council, the said provisions shall cease to have effect in such town or city, respectively. *Ib.* § 22.

15. If any person shall wantonly or maliciously break or injure any fire engine, or the apparatus thereto belonging, he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize, with sufficient surety or sureties, for his good behavior, during such term of time as the court shall order. *Ib.* § 23.

II. FIREWARDS.

1. How to be chosen.
2. Penalty for not refusing or accepting.
3. Firewards shall attend at fires.
4. Firewards, selectmen, &c., may order buildings pulled down to prevent the spreading of the fire.
5. Firewards, &c., may command assistance.
6. " may give orders to enginemen and others, &c.
7. Owners of buildings, when to be indemnified.
8. Embezzling property at fire, larceny.

1. The inhabitants of each town, at their annual meeting, may elect such a number of suitable persons, to be firewards therein, as shall be deemed necessary. *R. S. ch.* 18, § 1.

2. Each person so elected shall have notice thereof, forthwith, and shall, within three days after such notice, enter with the town clerk, his acceptance or refusal of the said office; and if any person, after such notice, shall neglect

to enter his acceptance or refusal as aforesaid, he shall, unless excused by the town, forfeit the sum of ten dollars, and the town may elect another in his place. *Ib.* § 2.

3. When a fire shall break out in any town, it shall be the duty of the firewards immediately to repair to the place of such fire, and to carry with them a suitable staff or badge of their office. *Ib.* § 3.

4. The firewards, who shall be present at the place in immediate danger from any fire, or any three of them, and, where no firewards are appointed, the selectmen present, or in their absence, two or more of the civil officers present, or in their absence, two or more of the chief military officers of said town present, shall have power to direct the pulling down, or demolishing of any such house or building as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire. *Ib.* § 4.

5. During the continuance of any fire, the said firewards or other officers, respectively, may require assistance for extinguishing the same, and for removing any furniture, goods or merchandize, from any building on fire or in danger thereof; and may appoint guards to secure the same; and may also require assistance, for pulling down, or demolishing any house or building, when they shall judge it necessary: and may suppress all tumults and disorders at such fire. *Ib.* § 5.

6. The said firewards, selectmen, or other officers, shall have authority to direct and appoint the stations and operations of the enginemen, with their engines, and of all other persons, for the purpose of extinguishing the fire; and if any person shall refuse or neglect to obey any such order, he shall forfeit for each offence, a sum not exceeding ten dollars. *Ib.* § 6.

7. In case the pulling down or demolishing of any house or building, by directions of the firewards or other officers

aforesaid, shall be the means of stopping the said fire; or if the fire shall stop before it come to the same, then every owner of such house or building shall be entitled to recover a reasonable compensation therefor from the town; but when the building, so pulled down or demolished, shall be that in which the fire first began and broke out, the owner thereof shall receive no compensation therefor. *Ib.* § 7.

8. In any such case of fire, if any person shall purloin, embezzle, convey away, or conceal any furniture, goods or chattels, merchandize or effects of the inhabitants, whose houses or buildings shall be on fire or endangered thereby, and shall not within two days, restore or give notice thereof to the owner, if known, or, if unknown, to one of the firewards or selectmen of the town, the person so offending shall be deemed guilty of larceny. *Ib.* § 8.

III. INCORPORATED FIRE DEPARTMENTS.

1. Organization.
2. Selectmen to appoint engineers, and fill vacancies.
3. Organization of engineers.
4. Engineers to have powers of firewards—to appoint enginemen, &c.
5. Organization of enginemen, &c.; their by-laws, &c.
6. Privileges, duties, &c., of engineers, &c.
7. Engineers to have care of engines, and other fire apparatus.
8. Engineers to make rules, as to carrying fire, lighted matches, &c., in streets, &c. Other general powers, as to preventing, &c. fires.
9. Future acts establishing fire departments not to take effect till accepted by towns. Provisional repeal.

1. Whenever any fire department shall hereafter be authorized to be established in any town, it shall be organized in the manner herein set forth, and the members thereof shall be governed by the provisions, and subject to the liabilities, and may exercise the powers, hereinafter contained. *St.* 1839, *ch.* 188, § 1.

2. The selectmen of any such town shall, in the month of April annually, appoint for their fire department as

many engineers as they may think expedient, not exceeding twelve, who shall hold their offices for one year from and after the first day of May next succeeding, and until others are appointed in their stead. And the selectmen may fill all vacancies which may occur in said offices. *Ib.* § 2.

3. The selectmen, immediately after the said appointment, shall issue a notice to each of said engineers, to meet at such time and place as shall be designated in such notice; at which meeting, the said engineers shall choose a chief engineer, a clerk, and such other officers as they may deem necessary for their complete organization. *Ib.* § 3.

4. The said engineers shall have and exercise the same powers, in relation to the extinguishment of fires, which firewards may by law have and exercise; and they shall exercise all the powers, and perform all the duties, in relation to the nomination and appointment of enginemen, which selectmen now by law are required to exercise and perform. And they may appoint such number of men to the engines, hose, hook, ladder, and sail carriages, and to constitute fire companies for the securing of property, when endangered by fire, as they may think expedient: *provided*, that the number of men appointed to each hydraulion, or suction fire engine, shall not exceed fifty; to each common engine, thirty-five; to each hose-carriage, five; to each hook and ladder and sail carriage, twenty-five; and to each fire company, twenty-five men. *Ib.* § 4.

5. The said engine, hose, hook and ladder, and sail carriage men, and said fire companies, may organize themselves into distinct companies, may elect the necessary officers and establish such rules, regulations and by-laws, as may be approved by the board of engineers, and may annex penalties to the breach of the same, not exceeding ten dollars in any case; and the same may be sued

for and recovered by the clerk of the company, and shall be appropriated to the use of the company: *provided*, such rules, regulations and by-laws, shall not be repugnant to the constitution or laws of this Commonwealth. *Ib.* § 5.

6. The said engineers, and all persons appointed by them as herein provided, shall be subject to the same duties and liabilities, and be entitled to the same privileges and exemptions as enginemen may by law be subjected and entitled to, when appointed by selectmen. *Ib.* § 6.

7. The boards of engineers shall have the care and superintendence of the public engines, hose, fire-hooks, ladder carriages, and ladders, in their respective towns, together with the buildings, fixtures and appendages, thereto belonging, and all the pumps, reservoirs for water, and all apparatus owned by the towns and used for extinguishing fires, and shall cause the same to be kept in repair, and, when worn out, to be replaced, and, from time to time, shall make such alterations therein, and additions thereto, as they shall deem necessary; *provided*, such alterations, additions or repairs shall not in any one year, exceed the sum of one hundred dollars, unless the town shall have authorized a larger appropriation. *Ib.* § 7.

8. The board of engineers established according to the provisions in this chapter in any town, may, at any meeting thereof, establish such rules and regulations as they may judge proper, to prohibit or regulate the carrying of fire, fire-brands, lighted matches, or other ignited materials, openly in the streets or thoroughfares of such town, or such parts thereof as they may designate, or to prohibit any owner or occupant of any building within such town, or such part thereof as the said board may designate, from erecting or maintaining any defective chimney, hearth, oven, stove or stove-pipe, fire-frame or other fixture, deposite of ashes, or any mixture or other material, which may produce spontaneous combustion, or whatever else may

give just cause of alarm, or be the means of kindling or spreading fires. And they may also, from time to time, make and ordain rules, ordinances and regulations for their own government, and for the conduct of citizens present at any fire, and may annex penalties for the breach of any such rules, ordinances and regulations, not exceeding twenty dollars for any one breach thereof; and the same may be prosecuted for, and recovered, by the chief engineer, in his own name; and all penalties, so recovered, shall be appropriated by the engineers to the improvement of the fire apparatus of the town; *provided*, that such rules, ordinances and regulations, shall not be repugnant to the constitution or laws of this Commonwealth, and they shall not be binding until approved by the inhabitants of the town, in legal meeting held for the purpose, and published in the manner in which the town shall direct. *Ib.* § 8.

9. No act hereafter passed, establishing a fire department in any town, shall take effect, until it is accepted and approved by the inhabitants of such town, at a meeting held for the purpose. And when such fire department shall be established subject to the duties and liabilities, and with the powers and privileges, and governed by the provisions of this chapter, all laws inconsistent with the provisions of this chapter, or with the provisions of the act establishing such fire department, shall be repealed so far as they may apply to such town. *Ib.* § 9.

HEALTH, BOARD OF.

1. Every town except, &c., may choose a board of health.
2. Board of health for the city of Boston.
3. Physician to the board of health.
4. Compensation of physician, &c.
5. Board of health to make regulations as to nuisances, &c.
6. " may make provision as to infected articles.
7. " may make regulations as to interments, &c.
8. Notice of their regulations to be published.

9. Board of health to examine into nuisances, &c.
10. When nuisances are found on private property.
11. If the owner, &c, does not obey orders of the board, then, &c.
12. When a party is convicted of a nuisance, &c.
13. Court of common pleas may issue injunctions in cases of nuisance.
14. How board of health may make compulsory examination of premises, when refused, &c.
15. Board may grant permits for the removal of infected articles or sick persons.
16. Board may remove infected persons to a separate house, &c.
17. If the infected persons cannot be removed, others may be, &c.
18. Persons may be stationed on borders of other States, to examine, &c.
19. Any two justices may issue warrants to remove sick persons.
20. One justice may issue warrant to secure infected articles.
21. Justices may take up houses, stores, &c., for safe keeping f goods, &c.
22. Officers, may break open houses, shops, &c, and command aid.
23. Expenses to be paid by owners of goods, &c.
24. Towns shall make compensation for houses, &c, and for services impressed.
25. Removal of prisoners attacked with disease in jail.
26. Return of removal to be made to the court—such removal shall not be an escape.
27. Towns may establish a quarantine.
28. Two or more towns may establish common quarantine ground.
29. Board of health may establish the quarantine of vessels.
30. Quarantine regulations to extend to all persons and all goods, &c.
31. " " to be binding on all persons after public notice.
32. Vessels to be ordered to quarantine ground.
33. Penalty, if master, seamen, &c., refuse to make answer on oath, &c.
34. Quarantine expenses to be paid by person or owner.
35. Hospitals for the small pox, may be provided by towns.
36. " " to be under the orders of the board of health.
37. " " not to be established within one hundred rods of houses in an adjoining town, unless, &c.
38 Physicians and others, in hospitals, to be subject to board of health.
39. Hospital shall be immediately provided, when the small pox breaks out unexpectedly.
40. When selectmen shall give notice by suitable signals.
41. Penalty on physicians and others, for violating regulations.
42. Every house holder to give notice of small pox in his family.
43. Penalty on physicians, for not giving notice of small pox, &c.
44. Towns may provide for inoculation of inhabitants, and defray expenses.
45. All penalties, forfeited to town, and recoverable by treasurer.

1. Every town respecting which no provision is made by any special law, for choosing a board of health, may, at their annual meeting, or any other meeting legally warned for the purpose, choose a board of health, to consist of not less than three, nor more than nine persons; or they may choose one person to be a health officer; and, in case they shall not choose any board of health or health officer,

the selectmen shall be the board of health. *R. S. ch.* 21, § 1.

2. In the city of Boston, the city council shall exercise all the powers, and perform all the duties of a board of health for the said city. *Ib.* § 2.

3. Every board of health may appoint a physician to the board, who shall hold his office during their pleasure. *Ib.* § 3.

4. The board of health shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of every person, employed by them in the execution of the health laws and of their own regulations. *Ib.* § 4.

5. The board of health shall make such regulations respecting nuisances, sources of filth and causes of sickness, within their respective towns, and on board of any vessels in their harbors, as they shall judge necessary for the public health and safety; and if any person shall violate any such regulation, he shall forfeit a sum not exceeding one hundred dollars. *Ib.* § 5.

6. The said board shall also make such regulations, as they may judge necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into or conveyed from their town, or into or from any vessel; and if any person shall violate any such regulations, he shall forfeit a sum not exceeding one hundred dollars. *Ib.* § 6.

7. The said board shall also make all regulations, which they may judge necessary for the interment of the dead, and respecting burying grounds in their towns. *Ib.* § 7.

8. Notice shall be given, by the board of health, of all regulations made by them, by publishing the same in some newspaper of their town, or, where there is no such news-

paper, by posting them up in some public place of the town; and such notice of said regulations shall be deemed legal notice to all persons. *Ib.* § 8.

9. The board of health shall examine into all nuisances, sources of filth, and causes of sickness, that may, in their opinion, be injurious to the health of the inhabitants within their town, or in any vessel within the harbor of such town, and the same shall destroy, remove or prevent, as the case may require. *Ib.* § 9.

10. Whenever any such nuisance, source of filth, or cause of sickness shall be found on private property, the board of health, or health officer, shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant shall neglect so to do, he shall forfeit a sum not exceeding one hundred dollars. *Ib.* § 10.

11. If the owner or occupant shall not comply with such order of the board of health, the board may cause the said nuisance, source of filth, or cause of sickness, to be removed; and all expenses incurred thereby, shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same. *Ib.* § 11.

12. When any person shall be convicted, on an indictment for a common nuisance, that may be injurious to the public health, the court may, in their discretion, order it to be removed or destroyed, at the expense of the defendant, under the direction of the board of health of the town, where the nuisance is found. *Ib.* § 12.

13. The court of common pleas, or any of the justices thereof, in term time or vacation, may, in all cases, either before or pending a prosecution for a common nuisance, affecting the public health, issue an injunction to stay or prevent the same, until the matter shall be decided by a jury or otherwise. *Ib.* § 13.

14. Whenever the board of health shall think it neces-

sary, for the preservation of the lives or health of the inhabitants, to enter any land, building or vessel within their town, for the purpose of examining into, and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath, to any justice of the peace of his county, stating the facts of the case, so far as he has knowledge thereof, and such justice may thereupon issue a warrant, directed to the sheriff or either of his deputies, or to any constable of such town, commanding them to take sufficient aid, and, being accompanied by any two or more members of said board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of, may be, and the same to destroy, remove or prevent, under the directions of such members of the board of health. *Ib.* § 14.

15. The board of health may grant permits for the removal of any nuisance, infected article or sick person, within the limits of their town, when they shall think it safe and proper so to do. *Ib.* § 15.

16. When any person coming from abroad or residing in any town in this state, shall be infected, or shall lately before have been infected, with the plague or other sickness, dangerous to the public health,* the board of health of said town, shall make effectual provision, in the manner which they shall judge best, for the safety of the inhabitants, by removing such sick or infected person to a separate house or otherwise, and by providing nurses, and other assistance and necessaries; which shall all be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; and in

* By the statute of 1848, ch. 119, so much of the statute of 1837, ch. 244, sections 1 and 2, as relates to the small pox is repealed. The provisons of statute 1837, ch. 44, thus modified, are embraced in sections 16 and 39 of this title.

case such person is not an inhabitant of any town, then at the charge of the Commonwealth. *Stat. of* 1837, *ch.* 244, § 1. *Stat. of* 1848, *ch.* 119.

17. If the infected person cannot be removed, without danger to his health, the board of health shall make provision for him, as directed in the preceding section, in the house in which he may be; and in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they shall judge necessary, for the safety of the inhabitants. *R. S. ch.* 21, § 17. *St.* 1838, *ch.* 158.

18. The board of health of any town near to, or bordering upon, either of the neighboring states, may appoint, by writing under their hands, suitable persons to attend at any place, by which travellers may pass from infected places in other states; and the persons so appointed, may examine such passengers, as they may suspect of bringing with them any infection, which may be dangerous to the public health, and if need be, may restrain them from traveling, until licensed thereto by the board of health of the town, to which such person may come; and any passenger, coming from such infected place, who shall, without license as aforesaid, travel within this state, unless it be to return by the most direct way to the state from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars. *R. S. c.* 21, § 18.

19. Any two justices of the peace may, if need be, make out a warrant, directed to the sheriff of the county, or his deputy, or to any constable, requiring them, under the direction of the board of health, to remove any person affected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries, for the accommodation, safety and relief of the sick. *Ib.* § 19.

20. Whenever, on the application of the board of health, it shall be made to appear to any justice of the peace, that there is just cause to suspect that any baggage, clothing or goods, of any kind, found within the town, are infected with the plague, or any other disease, which may be dangerous to the public health, such justice of the peace shall, by warrant, directed to the sheriff or his deputy, or to any constable, requiring him to impress so many men, as said justice shall judge necessary to secure such baggage, clothing or other goods, and to post said men as a guard over the house or place, where such baggage, clothing or other goods shall be lodged; which guard shall take effectual care to prevent any persons removing or coming near to such baggage, clothing or other goods, until due enquiry shall be made into the circumstances thereof. *Ib.* § 20.

21. The said justice may also, by the same warrant, if it shall appear to him necessary, require the said officers, under the direction of said board of health, to impress and take up convenient houses, or stores, for the safe keeping of such baggage, clothing or other goods; and the board of health may cause them to be removed to such houses or stores, or to be otherwise detained, until they shall, in the opinion of the said board of health, be freed from infection. *Ib.* § 21.

22. The said officers, in the execution of such warrant, shall, if need be, break open any house, shop, or other place mentioned in said warrant, where such baggage, clothing or other goods shall be; and they may require such aid as shall be necessary to effect the execution of the warrant; and all persons shall at the command of either of the said officers, under a penalty not exceeding ten dollars, assist in the execution of the warrant. *Ib.* § 22.

23. The charges of securing such baggage, clothing or

other goods, and of transporting and purifying the same, shall be paid by the owners thereof, at such rate and prices as shall be determined by the board of health. *Ib.* § 23.

24. Whenever the sheriff or other officer shall impress or take up any houses, stores, lodging, or other necessaries, or shall impress any men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property shall have been so impressed. *Ib.* § 24.

25. Whenever any person, confined in any common jail, house of correction, or work house, shall be attacked with any disease, which, in the opinion of the physician of the board of health, or of such other physician as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the town, the board of health shall, by their order in writing, direct the removal of such person to some hospital, or other place of safety, there to be provided for and securely kept, so as to prevent his escape until their further order; and if such person shall recover from the disease, he shall be returned to the said prison or other place of confinement. *Ib.* § 25.

26. If the person so removed, shall have been committed by the order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process was issued for committing such prisoner; and no prisoner, removed as aforesaid, shall be considered as having thereby committed an escape. *Ib.* § 26.

27. Any town may establish a quarantine ground in any suitable place, either within or without its own limits;

provided that if such place be without its limits, the assent of the town within whose limits it may be established, shall be obtained therefor. *Ib.* § 27.

28. Any two or more towns may, at their joint expense, establish a quarantine ground for their common use, in any suitable place either within or without their limits; provided that if such place shall be without their limits, they shall obtain the assent of the town within whose limits such place may be. *Ib.* § 28.

29. The board of health in each seaport town may, from time to time, establish the quarantine, to be performed by all vessels arriving within the harbor of such town: and may make such quarantine regulations as they shall judge necessary for the health and safety of the inhabitants. *Ib.* § 29.

30. The quarantine regulations so established, shall extend to all persons, and all goods and effects, arriving in such vessels, and to all persons who may visit or go on board of the same. *Ib.* § 30.

31. The quarantine regulations aforesaid, after notice thereof shall have been given, in the manner before provided, shall be observed by all persons; and any person who shall violate any such quarantine regulations, shall forfeit a sum not less than five dollars, nor more than five hundred dollars. *Ib.* § 31.

32. The board of health, in each seaport town, may, at all times, cause any vessel arriving in any such port, when such vessel or the cargo thereof shall, in their opinion, be foul or infected, so as to endanger the public health, to be removed to the quarantine ground, and to be thoroughly purified, at the expense of the owners, consignees, or persons in possession of the same; and they may also cause all persons, arriving in or going on board of such infected vessel, or handling such infected cargo, to be removed to any hospital under the care of said board of health, there to remain under their orders. *Ib.* § 32.

33. If any master, seaman or passenger, belonging to any vessel, on board of which any infection may then be, or may have lately been, or suspected to have been, or which may have been at, or which may have come from, any port where any infectious distemper prevails, that may endanger the public health, shall refuse to make answer on oath, to such question as may be asked him, relating to such infection or distemper, by the board of health of the town to which such vessel may come, (which oath any member of said board may administer,) such master, seaman or passenger, so refusing, shall forfeit a sum not exceeding two hundred dollars; and, in case he be not able to pay said sum, he shall suffer six months imprisonment. *Ib.* § 33.

34. All expenses incurred on account of any person, vessel or goods, under any quarantine regulations, shall be paid by such person, or the owner of such vessel or goods, respectively. *Ib.* § 34.

35. The inhabitants of any town may establish, within the same town, and be constantly provided with, one or more hospitals for the reception of persons having the small pox, or other disease which may be dangerous to the public health. *Ib.* § 35.

36. All such hospitals shall be subject to the orders and regulations of the board of health, or a committee of such town, appointed for that purpose. *Ib.* § 36.

37. No such hospital shall be established within one hundred rods of any inhabited dwelling house, situated in any adjoining town, without the consent of such adjoining town. *Ib.* § 37.

38. When any hospital shall be so established, the physicians, the persons inoculated or sick therein, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such furniture or other articles as shall be used or brought there, shall be sub-

ject to such regulations as may be made by the board of health, or the committee appointed for that purpose. *Ib.* § 39.

39. When any disease dangerous to the puhlic health, shall break out in any town, the board of health thereof, shall immediately provide such hospital or place of reception for the sick and infected, as they shall judge best for their accommodation and the safety of the inhabitants; and such hospitals and places of reception, shall be subject to the regulations of the said board of health, in the same manner as herein before provided for established hospitals; and the said board of health may cause such sick and infected persons to be removed to such hospitals or places of reception, unless the condition of the sick or infected person be such as not to admit of his removal without danger to his health; in which case the house or place where such person shall remain shall be considered as an hospital, to every purpose aforesaid; and all persons residing in, or in any way concerned with the same, shall be subject to the regulations of the said board of health, as before provided. *Stat. of* 1837, *ch.* 244, § 2. *St. of* 1848, *ch.* 119.

40. When any disease dangerous to the public health, is found to exist in any town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travelers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. *R. S. ch.* 21, § 41. *St.* 1838, *ch.* 158.

41. If any physician or other person, in any of the hospitals or places of reception before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, the person so offending shall, for each of-

fence, forfeit a sum not less than ten nor more than one hundred dollars. *Ib.* 42. *St.* 1838, *ch.* 158.

42. When any householder shall know that any person within his family is taken sick of the small pox, or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells; and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars. *R. S. ch.* 21, § 43. *St.* 1838, *ch.* 158. *St.* 1840, *ch.* 39.

43. When any physician shall know that any person whom he is called to visit, is infected with the small pox, or any other disease dangerous to the public health, such physician shall immediately give notice thereof to the selectmen, or board of health of the town in which the diseased person may be; and every physician, who shall refuse or neglect to give such notice, shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars. *Ib.* § 44.

44. Each town may, at any meeting, make suitable provision for the inoculation of the inhabitants with the cow pox, under the direction of the board of health of each town, or of a committee chosen for that purpose; and they shall raise all necessary sums of money, to defray the expenses of such inoculation, in the same manner as other town charges are paid. *Ib.* § 45.

45. All forfeitures, under the preceding sections of this chapter, shall enure to the use of the town where the offence shall have been committed; and they may be recovered by the treasurer, as provided in the fifteenth chapter of R. S., on complaint before the police court of such town, or before any justice of the peace of the county, in which the offence shall have been committed. *Ib.* § 46.

MEASUREMENT, INSPECTION &c., OF CERTAIN ARTICLES OF MERCHANDIZE.

1. WOOD, BARK AND CHARCOAL.

1. Appointment of wood and bark measurers.
2. Dimensions of cord wood.
3. Penalty for selling wood and bark not measured.
4. Fees of measurers.
5. Wood brought in by water how measured.
6. Carters to have tickets, &c.
7. Dimensions of charcoal baskets.
8. Illegal baskets to be seized.
9. Dimensions of charcoal boxes.
10. Penalty for using other measures.
11. Forfeitures, how recovered.

1. The selectmen of each town shall, in the month of March or April, annually, appoint as many measurers of fire-wood and bark, as the inhabitants shall at their annual meeting determine, unless the inhabitants themselves at such annual meeting shall choose them; and every such measurer so appointed or chosen shall be sworn to the faithful discharge of the duties of his office. *R. S. ch.* 15, § 33, § 38.

2. All cord wood exposed to sale shall be either four feet, three feet, or two feet long, including half the carf; and the wood being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four feet in width, and four feet in height. *R. S. ch.* 28, § 200.

3. If any fire-wood or bark, exposed to sale in any market, or upon any cart or other vehicle, shall be offered for sale before the same shall have been measured by a public measurer of wood and bark, and a ticket thereof signed by him delivered to the driver, certifying the quantity of wood which the load contains, the name of the driver, and the town in which he resides, the driver and owner of such wood or bark shall, for each load thereof, severally forfeit the sum of five dollars to the use of the town where such wood or bark shall be so offered for sale. *Ib.* § 201.

4. The measurers of wood and bark in any town shall

be entitled to such fees for their services, as the selectmen of such town shall establish; and the said fees shall, in each case, be paid to the measurer, by the driver, and shall be repaid by the purchaser. *Ib.* § 202.

5. All cord wood, brought by water into any town for sale, and landed, shall be measured by a measurer, sworn as aforesaid; and for that purpose, the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length, and being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. *Ib.* § 203.

6. Each wharfinger, carter or driver, who shall convey any firewood or bark from any wharf or landing place in any town, shall be furnished by the owner or seller of such wood or bark, with a ticket certifying the quantity which the load contains, and the name of the driver; and if any firewood or bark shall be conveyed as aforesaid, without such ticket accompanying the same, or if any driver shall refuse to produce and show such ticket on demand, to any measurer duly sworn as aforesaid, or to give his consent to have the same measured, or if such tickets shall certify a greater quantity of wood or bark than the load contains, in the opinion of the measurer aforesaid, after measuring the same, the driver and owner of such wood or bark shall for each load thereof, forfeit the sum of five dollars, to the use of the town where the offence shall be committed; provided, nevertheless, that nothing contained in this chapter shall be construed to extend to any person who shall transport or cart, or cause to be transported or carted, from any wharf or landing place to his own dwelling house or store, any cord wood or bark which he shall have purchased on such wharf or landing place, or shall have landed thereon upon his own account. *Ib.* § 204.

7. All baskets used in measuring charcoal for sale, shall contain two bushels, and shall be of the following dimen-

sions, to wit: nineteen inches in diameter in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and the basket shall be well heaped, and also be sealed by the sealer of the town, where the person so using the same shall usually reside; and every person who shall measure any charcoal, offered for sale in any basket of less dimensions, or not sealed as aforesaid, shall forfeit for each offence fifty cents, to the use mentioned in the preceding section, and such basket shall also be destroyed. *Ib.* § 205.

8. The selectmen of any town may appoint some suitable person, to seize and secure all baskets, used for measuring coal, that shall not be of the dimensions prescribed in the preceding section, and sealed as therein required, and may also prosecute all persons, who shall offend against the said provisions. *Ib.* § 206.

9. In the sale of charcoal, it shall further be lawful to measure the same in boxes of the following capacities, namely: of two bushels, five bushels, ten bushels, and twenty bushels, said boxes being first duly sealed; and five thousand one hundred and twenty-eight cubic inches shall be deemed equal to two bushels, or the heaped basket above described. *Ib.* § 207.

10. Every person, who shall measure charcoal offered for sale, in any box of other capacity, or not sealed as aforesaid, shall forfeit for each offence one dollar. *Ib.* § 208.

11. All the forfeitures mentioned in the four preceding sections, may be recovered by indictment. *Ib.* § 209.

II. LUMBER AND TIMBER.

1. Towns to choose surveyors of lumber.
2. Their duty.
3. Quality and denomination of pine boards and planks.
4. " of pine joists.
5. " of spruce boards, &c.
6. " of ash, maple, &c.
7. " of timber, except, &c.
8. " of mahogany and cedar.

9. Hewn and sawed timber, how surveyed, and sold.
10. Contents of boards, &c, to be plainly marked.
11. Boards, &c. to be sold according to marks.
12. Fees.
13. Penalty for fraud and for delay of surveyor.
14. Boards, &c. not to be sold or purchased unless surveyed, except, &c.
15. Penalty.

1. THERE shall be one or more persons, elected by the inhabitants of each town, at their annual meeting, to be surveyors of lumber, who shall be well skilled in the surveying and admeasurement of lumber, and who shall hold the office for one year, and until their successors be chosen, unless they shall be sooner removed. *R. S. ch.* 28, § 141.

They are to be elected in such manner as the meeting shall determine, and to be sworn to the faithful discharge of the duties of office. *R. S. ch.* 15, § 33 & 34.

2. The said surveyors shall survey oak and other hard wood, commonly used in ship building, and mahogany, ash, cedar and other ornamental wood and lumber, and all other lumber, brought into their town by water for sale. *R. S. ch.* 28. § 142.

3. In the survey of pine boards and planks, there shall be four sorts; the first sort shall be denominated number one, and shall include boards not less than one inch thick, straight grained, and free from rot, sap, knots and shakes; the second sort shall be denominated number two, and shall include boards not less than one inch thick, free from rot and large knots, and suitable for planing; provided, that such boards as are clear, but are deficient in thickness as aforesaid, shall be received as number two, by making such allowance for the deficiency in thickness, as may be required to make them equal to one inch thick; the third sort shall be denominated number three, and shall include boards not less than seven eighths of an inch thick, nearly free from rot, and nearly square edged, and suitable for covering buildings; the fourth sort shall be denominated number four, and shall include all boards and planks of

every description, not being within the other three denominations. *Ib.* § 143.

4. In the survey of pine joist there shall be two sorts; the first sort shall be denominated number one, and shall include all joist that are sound and square edged; the second sort shall be denominated number two, and shall include all other descriptions. *Ib.* § 144.

5. In the survey of spruce, hemlock, and juniper boards, plank and joist, there shall be two sorts; the first sort shall be denominated number one, and shall include all boards, plank and joist that are sound and square edged; the second sort shall be denominated number two, and shall include all other descriptions. *Ib.* § 145.

6. In the survey of ash, maple and other hard wood, and ornamental boards, plank and joist, there shall be two sorts; the first sort shall be denominated number one, and shall include all boards, plank and joist that are sound and free from shakes; the second sort shall be denominated number two, and shall include all other descriptions. *Ib.* § 146.

7. In the survey of timber, except mahogany and cedar, there shall be two sorts: the first sort shall be denominated number one, and shall include all timber that is sound, straight, square edged and in lengths or joists not less than sixteen feet long, due allowance being made for sap; the second sort shall be denominated number two, and shall include timber of all other descriptions. *Ib.* § 147.

8. In the survey of mahogany and cedar, there shall be but one sort; and the surveyor shall number all the mahogany and cedar logs or sticks, contained in each lot or cargo, in regular numerical order, and mark the number of each log or stick upon the same, in legible characters; and he shall to the best of his ability, ascertain the whole number of feet, board measure, in every log or stick, and what quantity thereof is merchantable, and what is refuse;

and he shall thereupon issue a certificate, or survey bill, of said survey, in which shall be stated the number of each log or stick, and the whole number of feet contained in the same, and specifying the number of feet, which are merchantable and refuse, respectively. *Ib.* § 148.

9. All hewn timber six inches square and upwards, except timber called scab, shall be surveyed and sold as ton timber, at the rate of forty cubic feet to a ton; all sawed timber shall be surveyed and sold by board measure. *Ib.* § 149.

10. In the survey of boards, planks, joists and sawed timber, the contents of the same shall be truly marked thereon, in plain and legible numbers, and all other marks shall be erased; and on the second and third sorts of boards and planks, the numbers two and three shall be in like manner marked thereon, respectively; and allowance and deduction shall be made for splits, not exceeding in any case one half the extent of the splits. *Ib.* § 150.

11. All boards, planks, joist and sawed timber shall be received and sold, according to the contents thereof, as fixed and marked under the eight preceding sections. *Ib.* § 151.

12. The fees for surveying and marking, according to the foregoing provisions, and to be paid by the purchaser, shall be as follows, namely: for pine, spruce, hemlock and juniper boards, plank, joist and sawed timber, twenty-four cents for every thousand feet, board measure; for pine, spruce, hemlock and juniper timber, twelve cents for every ton; for oak timber, twenty-four cents for every ton; for ash, maple and other hard wood, and ornamental boards, plank, and joist, forty cents for every thousand feet, board measure; for Cuba, St. Domingo, and other branch or hard mahogany, one dollar for every thousand feet, board measure; and for mahogany from the Bay of Honduras,

and for cedar, seventy-five cents for every thousand feet, board measure. *Ib.* § 152.

13. If any surveyor shall be guilty of, or connive at, any fraud or deceit, in surveying, marking, or numbering the contents of any boards, plank, joist or timber, he shall for each offence forfeit a sum not exceeding twenty dollars; and if on due notice and request, he shall unreasonably neglect or refuse to perform the duties aforesaid, he shall for each offence forfeit a sum not exceeding twenty dollars; the aforesaid forfeitures to be recovered, by indictment or information, to the use of the town in which the offence shall have been committed. *Ib.* § 153.

14. No person shall sell or purchase any boards, plank, joist or timber, brought by water into said town, unless they shall be surveyed, marked and numbered conformably to the provisions aforesaid; except only such as are intended to be exported from any town, and shall be actually shipped for that purpose, within one year after the same shall have been sold and delivered to the person first purchasing or receiving the same, in such town. *Ib.* § 154.

15. Any person who shall sell or purchase any such boards, plank, joist or timber, not surveyed, marked or numbered, according to the above provisions, (subject only to exception contained in the preceding section,) shall forfeit for all boards, plank, joist and timber so sold and purchased, double the amount of fees, due for the service of surveying the same, to be recovered, by indictment or complaint, to the use of the town in which the offence shall have been committed; provided, that in the city of Boston, the city government may establish any ordinances and regulations, with suitable penalties, respecting the appointment of surveyors and the survey and admeasurement of boards, plank, timber, and lumber of every description, brought by water into said city for sale, as they may from time to time determine to be expedient. *Ib.* § 155.

III. SHINGLES AND CLAPBOARDS.

1. Surveyors of to be chosen by towns.
2. Quality, size and denomination of Shingles.
3. How branded — fees — forfeitures.
4. Quality and size of Clapboards.

1. The inhabitants of each town shall, at their annual meeting, elect two or more suitable persons to be surveyors of shingles and clapboards; and they shall be under oath faithfully to discharge the duties of their office. *R. S. ch.* 28, § 156.

2. All shingles made in this state, or offered for sale, shall be from fifteen to eighteen inches in length, and may be sawed or shaved; they shall be free from shakes and worm holes, and shall be half an inch thick at the butt end, when green, and full three eighths of an inch when thoroughly seasoned, if for exportation to a foreign market, and not less than one third of an inch thick at the butt, when fully seasoned, if for home use, and four inches and a half wide on an average, and none less than three inches wide, and to hold their width three fourths of the way to the thin end; and they shall be bound in bundles, which shall each contain either one thousand, or half a thousand, or one quarter of a thousand; and the quality of shingles shall be designated by the numbers one, two, three, and refuse. *Ib.* § 157.

3. Each surveyor of shingles shall use his best skill and judgment in affixing the qualities of all shingles surveyed by him, and in addition to affixing the town brand, shall brand each bundle with his own name, and with the number designating the quality; and all shingles branded numbers *one* or *two*, whether made of pine, spruce, or cedar, shall be free from sap; and the surveyor shall be allowed by the buyer eight cents a thousand for surveying and telling; and before any shinglesaresen t from the town where they are made, or at the place of first sale, before their delivery,

they shall be viewed, surveyed and measured by a sworn surveyor, and the town brand set upon the hoop of the bundle; and all shingles offered for sale without being surveyed and marked as aforesaid shall be forfeited to the use of the town where they shall be so offered for sale. *Ib.* § 158.

4. All pine clapboards, that shall be exposed to sale, shall be made of good sound timber, clear of sap; and clapboards shall be free from shakes and worm holes, and of the following dimensions, namely, full five eighths of an inch on the back, or thickest part, five inches wide, and four feet six inches long, and they shall be straight and well shaved or sawed. *Ib.* § 159.

IV. HOOPS AND STAVES.

1. Maritime towns to choose cullers of hoops and staves.
2. Fees.
3. Quality and size of staves.
4. Quality and size of hogshead hoops.
5. Penalty for fraud in culling.

1. In every maritime town, from which staves are usually exported, there shall be two or more suitable persons chosen, at the annual meeting, to be viewers and cullers of staves and hoops, and they shall be sworn to the faithful discharge of the duties of their office. *R. S. ch.* 28, § 99.

2. They shall be allowed for their time and services, as follows, namely: twenty-eight cents a thousand for barrel staves, thirty-three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty-four cents a thousand for butt staves, as well refuse as merchantable; the merchantable to be paid for by the buyer, the refuse by the seller; and the culler shall be allowed fifty cents a thousand for hoops. *Ib.* § 100.

3. All white oak butt staves shall be at least five feet in

length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge, and every part thereof; all white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart or thinnest edge; all white oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge; all white oak barrel staves, for a foreign market, shall be thirty-two inches long, and for home use, shall be thirty inches long; and all shall average half an inch thick on the heart or thinnest edge; all white oak hogshead and barrel staves shall be at least four inches in breadth, and none less than three inches in breadth, in the narrowest part, and those of the breadth last mentioned shall be clear of sap; all red oak hogshead and barrel staves shall be of the same length, width and thickness, with the white oak hogshead and barrel staves above mentioned; and all staves shall be well and proportionably split. *Ib.* 101.

4. All hogshead hoops, that shall be exposed to sale or exported, shall be from ten to thirteen feet in length, and shall be made of white oak or walnut, and of good and sufficient substance, well shaved; those made of oak shall not be less than one inch broad at the least end, and those made of walnut shall be not less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve, and thirteen feet, respectively, shall be made up in distinct bundles by themselves; and if any hoops are packed of less dimensions than those prescribed by this law, or if any bundle shall contain less than thirty hoops, such bundle shall be forfeited and sold by the culler of hoops for the benefit of the town where it is offered for sale. *Ib.* § 102.

5. If any culler shall connive at or be guilty of any fraud, in the culling of staves or hoops, he shall forfeit the

sum of fifty dollars for each offence; and in case of his refusal to attend to the aforesaid service, when he shall be thereto requested, he shall forfeit the sum of five dollars. *Ib.* § 103.

V. UPPER LEATHER.

1. When mayor, &c. or selectmen shall appoint measurers.
2. Such measurers to go, on request, where leather is, to measure and seal it.
3. Each measurer to procure measures; also seals, with which he shall impress on leather the measure thereof, &c.
4. Penalty for counterfeiting &c. measurer's marks on leather.
5. Fees of measurers, and by whom to be paid.

1. The mayor and aldermen of the several cities, and the selectmen of the several towns, in this Commonwealth, shall annually, in the month of April, when thereto requested by two or more citizens of said cities or towns, appoint one or more persons as measurers of upper leather, who shall be sworn to the faithful discharge of their duty. *St.* 1841, *ch.* 119, § 1.

2. It shall be the duty of said measurers, appointed as aforesaid, to go whenever requested, to any place within the town or city for which they are appointed measurers, to measure and seal any number of sides of upper leather, made of the hides of neat cattle, buffalo or other animal, usually heretofore sold by measure, except such as shall have been previously measured and sealed by one of the measurers of the same town or city, or of some other town or city in this State, or by some person lawfully appointed for that purpose in some other of the United States. *Ib.* § 2.

3. Each measurer shall furnish himself with proper racks or measures, for the purpose of ascertaining the number of square feet in each side of upper leather which he shall be

requested to measure, and also suitable seals, and shall impress thereon his name, and the name of the place for which he is a measurer, at full length, and also the measure thereof in square feet, as low as a quarter. *Ib.* § 3.

4. If any person shall counterfeit, wilfully alter or deface such marks, on any side of upper leather so measured, he shall, for each offence, forfeit the sum of twenty-five dollars, one half to the use of complainant, and one half to the use of the town where such offence shall have been committed. *Ib.* § 4.

5. Every measurer shall be paid for measuring and sealing each side of upper leather, the sum of one cent, which shall be paid by the person who shall have requested him to measure and seal the same. *Ib.* § 5.

VI. BEEF.

1. Weighers of, when and how appointed.
2. To give certificate.
3. Fees for weighing.
4. Penalty on purchaser, &c., for purchasing contrary to law.

1. The selectmen of every town, where beef cattle are sold for the purpose of market, or barrelling, shall appoint one or more persons, who shall be conveniently situated in such town, and not dealers in cattle, to be weighers of beef; who shall be sworn to the faithful discharge of the duties of their office, and shall receive such fees as are hereinafter prescribed. *R. S. ch.* 28, § 36.

2. All beef, sold as aforesaid, shall be weighed by the said sworn weighers; and certificates of the weight of all the beef, hide and tallow of each of the cattle, in the form following, shall be signed by the said weighers and be delivered to the sellers thereof, to wit:

FORM OF CERTIFICATE.

This certifies that I have duly weighed the cattle, bought by of from of this day of 18

Beef, - - -					
Hide, - - -					
Tallow, - -					
Total, - -					

Sworn Weigher.

Ib. § 37.

3. The fees for weighing shall be as follows; for weighing any number of cattle, not exceeding five, twenty cents each; for all above five and not exceeding ten, fifteen cents each; for all above ten, and not exceeding twenty, ten cents each; for all above twenty, five cents each, after the first twenty; and twelve and a half cents for each certificate, which shall contain the several weights of all the cattle offered for weight by any one person, unless otherwise regulated by the seller thereof; and said fees shall be paid by the seller. *Ib.* § 38.

4. Any butcher or purchaser of beef cattle, intended for market or barrelling, who shall purchase any such beef cattle, contrary to the several provisions of this chapter, shall forfeit a sum not exceeding thirty dollars for each offence. *Ib.* § 39.

PARISHES.

1. General powers of parishes.
2. Parishes &c, declared corporations by Revised Statutes.
3. Rights heretofore existing continued.
4. Any corporation established for religions purposes may assess the pews in their meeting-house.
5. Churches to have accustomed privileges.
6. Membership of religious society voluntary.
7. What is necessary to constitute a person a member of a parish.
8. Parishes may regulate admission of members by by-laws.

9. Members alone may vote.
10. Objection to an election where illegal votes are received not valid if such votes do not change the majority.
11. Annual meetings for the choice of officers.
12. Meetings, how warned.
13. Meetings at which money is raised, how warned.
14. Officers of parish, how chosen.
15. Clerk to preside at choice of moderator.
16. Officers, how sworn.
17. Moderator's powers and duties.
18. No lists of voters required.
19. Meetings to be called on application of five or more voters:—contents of warrant.
20. Justices of the peace may call meetings, if assessors refuse, &c.
21. Persons chosen collectors, shall, if present, forthwith accept or refuse. Vacancies in offices how filled.
22. What to be deemed a refusal.
23. Prudential affairs of parishes, how managed.
24. Objects for which a parish may raise money.
25. Provisions not to affect existing rights.
26. Taxes how assessed.
27. Members not taxable for property held by them as guardians or trustees.
28. Parishes may appoint the treasurer or collector.
29. Parishes may abate taxes for prompt payment.
30. Parish taxes must be assessed according to the valuation of parish assessors.
31. Unincorporated societies may hold and manage donations.
32. Unincorporated societies may organize themselves, &c.
33. First meeting to be called by justice's warrant.
34. Contents of warrant and proceedings thereon.
35. Application of the three preceding sections.
36. Powers of societies so organized.
37. Proprietors of churches, &c., may raise money for alterations, repairs, &c.
38. Assessment and collection of such money.
39. Notice of sale of pews by the treasurer
40. Affidavits of notice of sale made evidence.
41. How proprietor's meetings may be called.
42. The last five sections not obligatory on parishes, except &c.
43. Proprietors may take down pews to alter churches.
44. Parishes and societies to have the like power in such cases.
45. No compensation to pew owners, when church is unfit for use.
46. When a pew is removed, proprietors of the meeting-house may tender the owner of the pew its value.

1. The several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses. *Amendments of Constitution, Art.* 11.

2. By the revised statutes, all parishes or religious soci-

eties then established, were declared corporations with the powers given to corporations by the forty-fourth chapter of said statutes. *R. S. ch.* 20, § 1.

3. All parishes or religious societies, whether corporate or unincorporate, shall continue to have and enjoy their existing rights, privileges and immunities, except so far as the same may be limited or modified by the eleventh article of the amendments of the constitution, and the provisions hereinafter expressed. *Ib.* § 2.

4. Any corporation for religious purposes may assess, upon the pews in any meeting-house which they may hereafter erect, or procure for public worship, according to a valuation of said pews, which shall be first agreed upon and recorded by the clerk, any sum or sums of money, for the support of public worship, and other parochial charges, and for the repairs of their meeting-house; and all such assessments may be collected in the manner provided in the thirty-sixth, thirty-seventh and thirty-eighth sections of this title. *Stat.* 1845, *c.* 213. *Rev. Stat. c.* 20, § 32. 33, 34.

5. The respective churches, connected and associated in public worship, with such parishes and religious societies, shall continue to have, exercise and enjoy all their accustomed privileges and liberties respecting divine worship, church order and discipline, and shall be encouraged in the peaceable and regular enjoyment and practice thereof. *Ib.* § 3.

6. All persons belonging to any religious society, shall be taken and held to be members, until they shall file, with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made or entered into by such society; and no person shall hereafter be made a member of any parish, or religious society, without his consent in writing. *Ib.* § 4.

7. No person can become a member of a parish without its consent. 21 *Pick.* 148.

The parish by a direct vote or by the act of an authorized agent, must accede to the application, in order to constitute a person applying, a member. *Ib.*

8. Every parish and religious society may make by-laws, prescribing the manner in which persons may become members thereof; provided such by-laws be not repugnant to the laws of the Commonwealth. *Ib.* § 5.

9. No person shall have a right to vote in the affairs of any parish or religious society, unless he is a member thereof. *Ib.* § 6.

10. It is not a valid objection to an election, that illegal votes were received, if they did not change the majority. 21 *Pick.* 148.

Several illegal voters having been permitted to vote at a parish meeting, in the election of officers, many of the legal voters protested against the proceeding and withdrew without voting; but the persons declared to be elected having received the votes of a majority of the legal voters who remained and voted, it was held that they were duly elected. *Ib.*

11. The qualified voters of every parish and incorporated religious society, and of every religious society organized according to the provisions of this chapter, shall meet in the month of March or April annually, at such time and place as shall be appointed by their assessors or standing committee, and shall choose a clerk and two or more assessors, treasurer, collector, who shall be sworn, and such other officers as they shall think necessary; all of whom shall continue in office one year, and until others are chosen and qualified in their stead. *Ib.* § 7.

12. All meetings shall be warned in such manner as the parish or society shall, by any by-law or vote, provide; and when they shall make no such order, the meeting shall

be warned in such manner as their assessors or standing committee shall, in their warrant for such meeting, direct. *Ib.* § 8.

13. Meetings at which money is raised must be warned at least seven days before the holding thereof. *Ib.* § 18.

14. The election of parish clerks, assessors, treasurers, and collectors, of every parish and religious society, and of every religious society organized agreeably to the provisions herein given, and all of the moderators of parish meetings, held for the choice of parish officers, shall be by written ballots; and the election of all other parish officers may be in such mode as the meeting shall determine. *Stat.* 1838, *ch.* 46.

15. At all meetings, the clerk shall preside in the choice of a moderator; and if their is no clerk, or if he is absent, the assessors or the standing committee, or any one of them, shall preside in the choice of a moderator; and a clerk may then be chosen, either pro tempore, or to fill the vacancy, as the case may require. *R. S. ch.* 20, § 9.

16. The moderator may administer the oath of office to the clerk; and the clerk may administer the oath to the assessors and collector; or the said oaths may be administered by any justice of the peace; and they shall all be substantially the same, as are required to be taken by the clerk, assessors and collectors of towns. *Ib.* § 10.

17. The moderator shall have the same power, in governing the meeting, that is given to the moderator of a town meeting; and all persons guilty of disorderly behavior at the meeting of any parish or religious society, shall be subjected to the same penalties and punishments, as are provided for the like offences in town meetings; all the pecuniary penalties to enure to the use of the parish or society, and to be recovered in the manner prescribed in the case of offences at town meetings. *Ib.* § 11.

18. No lists of voters are required and no officers are

authorized to make any such lists. The presiding officers in parish meetings must therefore determine, at their peril, upon the qualification of those who claim a right to vote. 24 *Pick.* 296.

19. When five or more of the qualified voters of any parish or religious society shall signify, in writing, their desire to have any matter inserted in a warrant for calling a meeting, the assessors or committee shall insert the same in the next warrant they shall issue for that purpose; and nothing acted upon shall have any legal operation, unless the subject matter thereof shall have been inserted in the warrant for calling the meeting. *Ib.* § 16.

20. In case the assessors or committee of any parish or religious society shall unreasonably refuse to call a meeting, or if there are no assessors or committee qualified to call one, any justice of the peace for the county, upon the application of five or more of the qualified voters, may call a meeting, in the same manner as the justice of the peace is authorized to call a town meeting. *Ib.* § 17.

21. The person chosen collector shall, if present, forthwith declare his acceptance or refusal of the office; and in case of non-acceptance, the parish or society shall proceed to a new choice, and so from time to time, until one shall accept and be sworn. *Ib.* § 12.

22. Any person so chosen, who shall be present and shall not declare his acceptance of the office of collector, or who shall, for the space of seven days, after being summoned by a constable, or any other person whom the clerk or assessors may appoint for that purpose, neglect to take the oath of office, shall be considered as refusing to accept the office. *Ib.* § 13.

23. The prudential affairs of parishes and religious societies shall be managed by their assessors, or by a standing committee, to be specially appointed for that purpose; and the said assessors or committee shall have like author-

ity, for calling meetings of the parish or society, as selectmen have for calling town meetings. *Ib.* § 14.

24. The qualified voters of every parish and religious society, at the annual meeting, or at any other meeting regularly notified seven days, at least, before the holding thereof, may grant and vote such sums of money as they shall judge necessary for the objects stated in the amendment of the constitution above quoted, for sacred music, and for the purchase and preservation of burial grounds. *Ib.* § 18.

25. The provisions of the twentieth chapter of the revised statutes, (which are given under this title,) are not to diminish or enlarge the power of taxation enjoyed by any parish, by virtue of any special law, or act of incorporation; nor shall they be construed to impair any existing rights of property and of any territorial parish. *Ib.* § 19 & 21.

26. Sums raised by any parish or religious society, shall be assessed on the polls and estates of all the members of the parish or society, in the same *manner* and *proportion* as town taxes are by law assessed. But all parish and society taxes are to be assessed upon all the property, (not exempted by law from taxation,) of all the members of such parish or society, including all their real estate, within the state, in whatever part thereof it may be situated, and all their personal estate, wherever the same may be; and no citizen shall be liable to pay any tax for the support of public worship, or for other parish charges, to any parish or religious society, other than that of which he is a member. *Ib.* § 30.

27. No person shall be liable to be taxed in any parish, or religious society, of which he is a member, for any property, real or personal, held by him as guardian or trustee of any other person.

28. Every parish and religious society may appoint their treasurer to be the collector of their taxes; and when so

appointed, he shall have the like powers, and shall proceed, in the like manner, in enforcing the collection of such taxes, after the expiration of the time, fixed by the parish or society for the payment thereof, as is provided in the eighth chapter, for the collection of taxes by the collectors of towns. *Ib.* § 23.

29. Every parish and religious society may authorize their treasurer and collector to make an abatement of such sum as they shall agree upon at their annual meeting, to all those who make voluntary payment of their taxes, within such periods as shall be fixed on for that purpose by the parish or society. *Ib.* § 24.

30. Parish taxes must be assessed according to a valuation to be made by the assessors of the parish; and if they are assessed according to a valuation made by the assessors of the town, the assessment will be illegal and void. 2 *Pick.* 392.

31. In case any donation, gift or grant, shall be made to any unincorporated religious society, such society shall have the like power to manage, use, and employ the same, according to the terms and conditions, on which the same may be made, as incorporated societies now have, or may hereafter have, by law; to elect suitable trustees, agents or officers therefor; and to prosecute and sue for any right, which may vest in them, in consequence of such donation, gift or grant; and such society shall be a corporation, so far as may be necessary for the purposes expressed in this section. *R. S. ch.* 20, § 25.

32. Any parish, which, from the want of officers, or any other cause, may be unable to assemble in the usual manner, and any religious society, that is not incorporated, provided they contain respectively ten or more qualified voters, may organize themselves as a corporation, in the manner and for the purposes expressed in the following sections. *Ib.* § 26.

33. Any justice of the peace for the county in which such parish or religious society may be, upon application in writing by any five or more of the qualified voters thereof, may issue his warrant for calling a meeting of the same. *Ib.* § 27.

34. The warrant shall state the objects of the meeting, and shall be directed to some one of the applicants therefor, requiring him to warn the qualified voters of the parish or society to meet at such time and place, as shall be appointed in the warrant; and, upon due return thereof, the same justice, or any other justice of the peace for the county, may preside at such meeting, for the choice and qualification of a clerk, who shall enter at large, upon the records of the parish or society, the proceedings had in the organization thereof; and the parish or society may thereupon proceed to choose a moderator, and to do all such other things, as parishes are by law authorized to do at their annual meetings; provided the subject matter thereof shall be inserted in said warrant. *Ib.* § 28.

35. The provisions of the three preceding sections, as well as the provisions of the nineteenth section, apply to a parish that has once been legally organized, but which for the want of officers, or any other cause, is unable to assemble in the usual manner. Therefore, when a meeting of such parish, whose assessors had not been sworn, was called and conducted in the manner prescribed in the three preceding sections, and a parish committee was chosen at such meeting, it was held that they were the legal committee, and that another committee, afterwards chosen at a meeting called according to the provisions of the nineteenth section, had no legal authority. 6 *Met.* 448.

36. Every parish and religious society, organized as provided in § § 30, 31 and 32, shall become a corporation, and shall have all the powers and privileges, and be subject to all the duties, liabilities and requirements, which incor-

porated religious societies may, by law, have or be subject to, with power to have and hold so much estate, real or personal, as may be necessary for the objects of such organization, and no more; provided, that all the powers, derived from any such organization, may at any time be revoked by the legislature. *Ib.* § 29.

37. Whenever the proprietors of any church, meeting house, or other house of public worship, shall deem it expedient to alter, enlarge, repair, rebuild, or remove the same, it shall be lawful for them, at a legal meeting, called for that purpose, to raise such sums of money, as they may judge necessary, to carry any of said purposes into effect and to purchase any land necessary for the same. *Ib.* § 31.

38. Such moneys may be assessed on the pews in such church or house, and the assessment may be committed to the treasurer, chosen by said proprietors to receive the same; and the treasurer shall forthwith give notice thereof, by posting up an advertisement at the principal outer door of such house, stating the completion of such assessment, and the day of delivery thereof to him; and if said taxes, or any part thereof, remain unpaid for three months, after the posting up of notifications as aforesaid, it shall be the duty of the treasurer to collect the same forthwith, by sales at public auction of the pews, whereon the tax or any part thereof shall remain unpaid, in the manner provided in the following sections. *Ib.* § 32.

39. When it shall become the duty of the treasurer, to sell any pew for taxes, he shall post up a notification of the intended sale thereof, at the principal outer door of such church or house, at least three weeks before the time of sale, therein setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if said tax or any part thereof shall remain unpaid, at the time appointed for such

sale, the treasurer shall sell the pew, by public auction, to the highest bidder, and shall execute and deliver, to the purchaser, a sufficient deed of conveyance of the same; and the money, arising from such sale, beyond the taxes and incidental reasonable charges, shall be paid by the treasurer to the former owner of the pew so sold, or to his assigns. *Ib.* § 33.

40. The affidavit of any disinterested person, annexed to any original notification, or to a copy thereof, made before a justice of the peace, and recorded on the proprietors' records within six months next after such sale, shall be allowed, as one mode of proof of the posting up of the notifications herein before required. *Ib.* § 34.

41. Any meeting of the proprietors of a church or house of public worship, for any of the purposes aforesaid, may be called by a warrant from a justice of the peace, granted on application to him in writing, made by any five of said proprietors, which warrant shall be directed to one of the applicants; or such meeting may be called by a notification by the clerk of said proprietors, whose duty it shall be to warn a meeting, on a like application to him; and, in either case, such meeting may be warned by posting up a notification thereof, at the principal outer door of the church or house, fourteen days at least before the time appointed for the meeting. *Ib.* § 35.

42. The provisions contained in the last five sections are not obligatory on parishes. They may raise money for repairing, &c., by assessment on the property of the members of the parish in the accustomed manner; but if it become necessary to take down the pews of the meeting house, the provisions of the next section are to be observed. *See* 3 *Pick.* 344.

43. Whenever any such proprietors shall deem it necessary, for the purpose of altering, enlarging, repairing, rebuilding, or removing their church or house, to take down

any pews therein, it shall be lawful for them so to do; such pews being first appraised by any three or more disinterested persons, chosen by said proprietors for that purpose; and the pews newly erected, shall be sold by the treasurer of the proprietors, by public auction, to the highest bidder, and deeds thereof shall be given, in like manner as when they are sold for the payment of taxes; and the moneys arising from such sale shall be applied, so far as may be necessary, to paying the appraised value of the pews taken down to the owners thereof; and the deficiency, if any, shall be paid by the proprietors of such church or house, within thirty days next after the sale. *R. S. ch.* 20, § 36.

44. Whenever any parish or religious society, being the owner of any church, meeting house, or other house of public worship, shall deem it necessary for the purpose of altering, enlarging, repairing, rebuilding or removing any such church or house, to take down any pews therein, it shall be lawful for them so to do; and, in such case, the like regulations shall be observed, and the like proceedings had, as are provided in the preceding section. *Ib.* § 37.

45. Nothing contained in the two preceding sections shall entitle any person to compensation for a pew so taken down, in any case, where such church or house shall have become unfit for the purposes of public worship. *Ib.* § 38.

46. When after taking all legal steps, a pew is removed, the proprietors of the meeting house may tender the owner of the pew the value of the same, and thereby bar his action for damages. 24 *Pick.* 347.

If a parish abandon its meeting house as a place of public worship, although it continue to be fit for that purpose, and erect a new one on a different site, it does not thereby subject itself to any liability to the proprietor of a pew in the old meeting house, it not appearing that the parish acted wantonly, or with any intention to injure him. 19 *Pick.* 361.

POOR.

I. OVERSEERS OF THE POOR.

1. How chosen.
2. Selectmen to be, if others are not specially chosen.
3. Overseers of the poor may bind children of paupers, and pauper children.
4. Until what age and upon what terms.
5. Indenture when void.
6. By indenture of two parts, one to be kept for the minor.
7. Money &c. paid by any master, to be for the use of the apprentice.
8. Overseers to inquire into the treatment of children.
9. And may file a complaint for misconduct of the master in C. C. Pleas.
10. The court may thereupon discharge the apprentice, &c.
11. Or may award costs for the master.
12. Master also liable to an action on the indenture.
13. by whom such action may be brought.
14. Proceedings therein, when brought by the overseers.
15. When minor may be discharged and bound anew.
16. Master may file a complaint for misconduct of the apprentice, and be discharged from the contract.
17. Apprenticeship discharged by the death of the master.
18. Minor may be bound to a mistress, to whom the foregoing provisions shall apply.
19. Overseers may deliver up dead bodies to physicians in certain cases.
20. No dead body shall be delivered up if claimed, &c.
21. Physicians to give bond on receiving a dead body.
22. Overseers to give or withhold approbation of sale of real estate of spendthrifts, &c., under guardianship.

1. Overseers of the poor are to be chosen at the annual meeting in such mode as the meeting shall determine. *R. S. ch.* 15, § 33, 34.

2. The selectmen are to be overseers of the poor where other persons are not specially chosen to that office. *Ib.* § 52.

3. The overseers of the poor may bind, as apprentices or servants, the minor children of any poor person, who has become actually chargeable to their town, as having a lawful settlement therein, or who is supported there, in whole or in part, at the charge of the Commonwealth, and also all minor children, who are themselves chargeable to the town, as having a lawful settlement therein, or as poor persons supported by the Commonwealth. *R. S. ch.* 80, § 6.

4. Such children, whether under or above the age of

fourteen years, may be bound, females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract, for teaching such children to read, write and cipher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable. *Ib.* § 7.

5. An indenture entered into by overseers of the poor which does not contain a provision for the instruction of the minor in reading, &c. is void as to all the parties. 5 *Pick.* 250. 16 *Pick.* 44.

Overseers of the poor cannot bind out minors to be apprentices until an age less than twenty-one. 16 *Pick.* 44.

6. No minor shall be so bound by the overseers, unless by an indenture of two parts, sealed and delivered by the overseers and by the master, one part of which shall be deposited with the town clerk, and be safely kept by him for the use of the minor. *R. S. ch.* 80, § 8.

7. All considerations, of money or other things, paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound. *Ib.* § 9.

8. Overseers shall inquire into the treatment of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of contract, on the part of their masters. *Ib.* § 10.

9. In case of any such misconduct or neglect of the master, a complaint may be filed by the overseers, in the court of common pleas for the county in which the master resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the master, shall proceed to hear and determine the cause, with or without a jury, as the allegations of the parties may require. *Ib.* § 11.

10. After a full hearing of the parties, or of the complainants alone, if the master shall neglect to appear, the court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may award execution accordingly, and the minor may be bound out anew. *Ib.* § 12.

11. If the complaint shall not be maintained by the overseers, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause. *Ib.* § 13.

12. Every master shall moreover be liable, whether such complaint shall have been filed or not, to the account on the indenture, for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use, by the person who shall recover the same, and the residue, if any, shall be paid to the minor, if a male, at his age of twenty one years, and if a female, at her age of eighteen years, or at the time of her marriage within that age. *Ib.* § 14.

13. Such action may be brought by the overseers or their successors in that office, or it may be brought, in the name of the minor, by his guardian or next friend, as the case shall require, or by himself, after the expiration of the term of apprenticeship or service. *Ib.* § 15.

14. If the action is brought by the overseers, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor; and the money recovered therein shall be deposited in the town treasury, to be applied and disposed of as provided in the twelfth section. *Ib.* § 16.

15. If judgment in such action, by whomsoever brought shall be rendered for the plaintiff, in the court of common pleas, or the supreme judicial court, the court may also, upon the motion of the plaintiff, discharge the minor from his apprenticeship or service, if it shall not have been already done in the manner before provided, and the minor may be thereupon bound anew. *Ib.* § 18.

16. If any such apprentice or servant shall be guilty of any gross behavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the court of common pleas, for the county in which he resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the apprentice or servant, and all persons who have covenanted on his behalf, and after a full hearing of the parties, or of the complainant alone, if the adverse parties shall neglect to appear, may render a judgment or decree, that the master be discharged from the contract of apprenticeship or service. And any minor so discharged may be bound out anew. *Ib.* § 22 & 23.

17. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew. *Ib.* § 24.

18. Any indenture of apprenticeship or service, made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters. *Ib.* § 25.

19. The overseers of the poor of any town, and the mayor and aldermen of any city, in this Commonwealth, shall, upon request, give permission to any regular physician, duly qualified according to law, to take the dead bodies of such persons as are required to be buried at the

public expense, within their respective towns or cities, to be by him used within this Commonwealth for the advancement of anatomical science, preference being always given to medical schools by law established in this State, for their use in the instruction of students; and it shall be the duty of all persons having charge of any poor-house, work-house, or house of industry, in which any person required to be buried at the public expense shall die, immediately to give notice thereof to the overseers of the poor of the town, or the mayor and aldermen of the city, in which such death shall occur, and the dead body of such person shall not, except in case of necessity, be buried, nor shall the same be dissected or mutilated, until such notice shall have been given, and permission therefor granted by said overseers, or mayor and alderman. *St. of* 1845, *c.* 242, § 1.

20. No such body shall in any case be surrendered, if the deceased person, during his last sickness, of his own accord, requested to be buried, or if, within twenty-four hours after his death, any person claiming to be of kindred or a friend to the deceased, and satisfying the proper authority thereof, shall require to have the body buried; or if such deceased person was a stranger, or traveller who suddenly died; but the dead body shall, in all such cases, be buried; and no body shall be surrendered until the physician requesting the same, shall give to the board, by whose order the same is to be surrendered, the bond required by the following section. *Ib.* § 2.

21. Every physician shall, before receiving such dead body, give to the board of officers, surrendering the same to him, a sufficient bond, that each body, so by him received, shall be used only for the promotion of anatomical science, and that it shall be used for such purpose within this state only, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried. *R. S. ch.* 22, § 12.

22. No licenses for the sale of the real estate of any idiot or insane person under guardianship, or of any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be granted unless the overseers of the poor of the town or place, of which the ward is an inhabitant, or in which he resides, shall certify in writing their approbation of such proposed sale. *R. S. ch.* 71, § 28.

II. SETTLEMENT OF PAUPERS.

1. Modes of settlement prescribed in the revised statutes.
2. Whence derived.
3. What settlements to be determined by them.
4. Rule first. Married women to have the settlement of their husbands &c.
5. If marriage such as our laws recognize, sufficient.
6. Settlement not lost by divorce, for adultery.
7. A void marriage does not confer a settlement.
8. Rule second. Legitimate children follow their father or mother, &c.
9. Rule does not apply to children of full age.
10. Nor to female children under age when married,—otherwise as to males.
11. Application of the rule to idiots.
12. A minor acquires a new settlement of his mother though he resided at the time out of Commonwealth.
13. Third rule. Illegitimate children have the settlement of their mother at the time of birth.
14. But any new settlement she may acquire.
15. Fourth rule. Living three years successively on freehold estate.
16. Estate sufficient though under mortgage the whole time for its value.
17. Or if held under title apparently good, &c.
18. Living on an estate in remainder, with a preceding freehold in another, not sufficient.
19. If a person receives aid as a pauper, settlement is not gained.
20. Settlement may be gained, though the person is under guardianship as a spendthrift.
21. Fifth rule. Being assessed five successive years for an estate of $200. &c.
22. Taxes need not be paid.
23. Provision applies to personal as well as real estate.
24. Party must reside in town the whole five years.
25. Sixth rule. Serving one year in certain town offices.
26. Seventh rule. Settled and ordained ministers.
27. Eighth rule. Persons admitted inhabitants by a vote of the town.
28. Ninth rule. Settlement by an incorporation of an unincorporated place.
29. Tenth rule. Where settlements shall fall upon the division or incorporation of town.
30. Eleventh rule. Serving apprenticeship four years, &c.
31. Twelfth rule. Residence of

ten years and paying taxes five years.

32. Residence must be uninterrupted.

33. If pauper calls for aid, settlement will not be gained.

34. The pauper need not have an estate in fee or freehold under this mode.

35. The taxes must be paid during five years.

36. Effect of omission to tax.

37. Having a family in another state will not prevent settlement.

38. Payment of highway tax sufficient.

39. Settlement lost if party is committed to jail during the ten years and receives relief as a pauper from the jailor.

40. Otherwise if his wife receives assistance in another town without his knowledge.

41 Settlements under the repealed clause of statute of 1793, c. 34.

42 Settlement was gained under this mode, though the title of the estate was defeasible.

43. The income must be clear from all charges.

44. It must have been three pounds each and every year.

45. Owner must have had his home in the town the whole of the same three years.

46. An estate held in trust was sufficient.

47. Also an estate leased.

48. Settlements prior to April 10th, 1767.

49. Settlements from April 10th, 1767, to June 23d, 1789.

50. Modes of acquiring settlements, from June 23d, 1709, to February 11th, 1794.

51. Provision for persons who had began to acquire settlement when the revised statutes took effect.

52. A legal settlement continues till a new one is acquired in this state.

53. Persons residing on lands of U. S. do not acquire settlements.

1. By the revised statutes, twelve modes are presented by which legal settlements may be acquired, in any town, so as to oblige such town to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief. *R. S. ch.* 45, § 1.

2. The provisions of the revised statutes took effect on the first day of May, eighteen hundred and thirty-six. The rules with the exception of the fourth are the same as those of the statutes of 1793, *ch.* 34. The fourth rule is taken from the statutes of 1821, *ch.* 94.

3. All settlements since the first day of May, 1836, and all future settlements are to be determined by the rules as they now stand. So are all settlements with the exception of those arising under the fourth mode, which have been acquired since the eleventh day of February, 1794.

The fourth rule applies only to settlements acquired since the twenty-first day of February, 1822.

4. We give the rules with some of the most important of the decisions of the Supreme Court upon them.

First, A married woman shall always follow and have the settlement of her husband if he have any within the state; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it from the state, in the town where his wife shall have her settlement. *R. S. ch.* 45, § 1.

5. It can make no difference where the marriage was solemnized, whether within or without the Commonwealth, provided it be such a marriage as our laws recognize, nor what was the age of the parties, provided they were competent to contract matrimony. 9 *Mass.* 201.

6. A wife does not lose her settlement derived from her husband by means of divorce, for the cause of adultery. *Ib.*

7. But a void marriage does not confer a settlement. As where a woman intermarried with an idiot, it was held that the marriage being void, no settlement was gained by the wife. *Ib.* § 12. *Mass.* 363.

8. *Second*, Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if he have none, they shall, in like manner, follow and have the settlement of their mother, if she have any. *R. S. ch.* 45, § 1.

9. Children of full age do not follow the new settlements of their parents. 4 *Mass.* 493.

10. Nor do female children, under age, if freed from their parents by marriage or other legal emancipation. 13 *Mass.* 169.

But if a male infant or minor marry, he is not thereby emancipated so as to be capable of gaining a settlement in his own right. 15 *Mass.* 203.

11. An idiot from birth, not having estate sufficient to

give him a settlement in virtue thereof, follows the settlement of his father as well after he becomes of age as before. 15 *Mass.* 237.

One who becomes non compos after coming of age does not follow a new settlement of his father. 3 *Pick.* 173.

12. Where a minor, deriving his settlement from his mother, resided in another state, employed in learning a trade, and the mother acquired a new settlement in this Commonwealth by a second marriage, before he became of age, it was held, that his settlement followed that of his mother. 18 *Pick.* 264.

13. *Third,* Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth, in the place where they may be born, if neither of their parents then have any settlement therein. *R. S. ch.* 45, § 1.

14. They do not follow any new settlement the mother may acquire; their first settlement remains until they gain one in their own right. 13 *Mass.* 381.

15. *Fourth,* Any person of the age of twenty-one years, being a citizen of this or any other of the United States, having an estate of inheritance or freehold, in any town within the state, and living on the same three years successively, shall thereby gain a settlement in such a town. *R. S. ch.* 45, § 1.

16. A settlement may be acquired by owning an estate of freehold and inheritance, and residing thereon three years successively, although the land be under mortgage, during the whole time, for its full value. 19 *Pick.* 294.

17. In order to gain a settlement it is sufficient if the party is seized by an apparently good title, and no present right of entry is outstanding in any other person. 21 *Pick.* 233.

18. A person does not acquire a settlement by thus living on an estate, which he has in remainder, as tenant of the owner of the preceding estate of freehold. The provision has reference to such an estate as the party has a right to occupy, and not to an estate in expectancy, when there is a preceding estate of freehold in another. 5 *Met.* 350.

19. If a person receives aid from the town where he resides he would not acquire a settlement under this rule. 21 *Pick.* 233.

20. A person under guardianship as a spendthrift gained a settlement under this mode by living three years successively on an estate of inheritance or freehold purchased with his money and conveyed by deed to him, though it was purchased by his guardian without the sanction of the supreme court of probate. 3 *Met.* 165.

21. *Fifth*, Any person of the age of twenty-one years, being a citizen of this or any other of the United States, having an estate the principal of which shall be set at two hundred dollars, or the income at twelve dollars, in the valuation of estates made by assessors, and being assessed for the same, to state, county, or town taxes, for the space of five years successively, in the town where he dwells and has his home, shall thereby gain a settlement therein. *R. S. ch.* 45, § 1.

22. It is not essential that the taxes assessed on such estate be paid. 15 *Mass.* 160.

23. The provision applies to personal estate as well as real. 4 *Met.* 178.

24. The party must reside in the town during the whole five years for which he is assessed. 24 *Pick.* 166. *See* 22 *Pick.* 365.

It is not sufficient that he had the estate liable to be taxed in the town, and was able to pay taxes for the five years. 22 *Pick.* 385.

25. *Sixth*, Any person, being chosen and actually serving, one whole year, in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable or collector of taxes, in any town, shall thereby gain a settlement therein; and the year mentioned in this section shall be considered as including the time, between the choice of such officers at one annual meeting, and the choice at the next annual meeting, whether it be more or less than a calendar year. *R. S. ch.* 45, § 1.

A collector of a school district tax is a collector of taxes, within the intent of this section. 15 *Mass.* 523.

26. *Seventh*, Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the town, wherein he is or may be settled as a minister. *R. S. ch.* 45, § 1.

27. *Eighth*, Any person that shall be admitted an inhabitant by any town, at any legal meeting held under a warrant, which shall contain an article for that purpose, shall thereby acquire a legal settlement therein. *R. S. ch.* 45, § 1.

28. *Ninth*, Any citizen of this or any other of the United States, dwelling and having his home in any unincorporated place, at the time when the same shall be incorporated into a town, shall thereby acquire a legal settlement therein. *Ib.* 6 *Met.* 484.

29. *Tenth*, Upon the division of any town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that town, wherein his last dwelling place or home shall happen to fall upon such division; and when any new town shall be incorporated, composed of a part of one or more old incorporated towns, every person, legally settled in the bounds of such new town, at the time of its incorporation, shall thereby acquire a legal settlement in such new town;

provided,' that no person, residing in that part of any town, which, upon such division, shall be incorporated into a new town, having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means, by which he would have gained it there, if no such division had been made. *R. S. ch.* 45, § 1. 6 *Met.* 484.

Where parts of different towns together with unincorporated territory, are incorporated into a district, a citizen dwelling and having a home in such unincorporated territory, gains a legal settlement in such district, by force of the act of incorporation, in the same manner, as if such district had been wholly composed of territory previously unincorporated. 6 *Met.* 484.

When part of an existing town is *annexed* to another *existing* town, persons dwelling on the part detached, having settlements in their own towns, acquire new settlements in the towns to which they are transferred; but the principle is confined to those only who actually *dwelt* there at the time of the annexation. 7 *Mass.* 156. 1 *Pick.* 144. 19 *Pick.* 426.

30. *Eleventh*, Any minor, who shall serve an apprenticeship to any lawful trade, for the space of four years, in any town, and actually set up such trade therein, within one year after the expiration of said term, being then twenty-one years old, and shall continue to carry on the same for the space of five years therein, shall thereby gain a settlement in such town; but such person being hired as a journeyman shall not be considered as setting up a trade. *R. S. ch.* 45, § 1.

31. *Twelfth*, Any person of the age of twenty one years, being a citizen of this or any other of the United States, who shall hereafter reside in any town within this State, for the space of ten years together, and pay all state, coun-

ty or town taxes, duly assessed on his poll or estate, for any five years within said time, shall thereby gain a settlement in such town. *Ib.*

32. The ten years residence must be uninterrupted; and any absence, however short, with the intention of permanently changing the place of abode, will prevent the gaining a settlement. 11 *Mass.* 394. 7 *Pick.* 42.

33. If, before the expiration of the ten years' residence the pauper calls for aid, which is furnished him, and the expenses thereof be reimbursed by the town where he is lawfully settled, this will be such an interruption of his residence as will prevent his gaining a settlement. 13 *Mass.* 460. 12 *Pick.* 1.

And this though he has no settlement within the Commonwealth. 3 *Met.* 428.

34. As the payment of taxes within the town seems to be the principal cause of the settlement, it is not material that the pauper should have had a *fee* or even a *freehold* in the estate for which he had paid taxes. Thus if a person be taxed for a piece of land which he occupies from year to year, or by sufferance, it will be considered as such person's estate, under the 12th, but not under the 5th mode of gaining a settlement. 13 *Mass.* 460. 15 *Mass.* 253.

35. The taxes must be paid during five years: it is not sufficient that they were paid part of the time, and remitted by a vote of the town for the remainder. 19 *Pick.* 389.

The neglect to enforce the collection of a tax will not operate as a payment, upon the question of settlement. 20 *Pick.* 345.

36. A settlement is not gained by a person's residing in a town for ten years together and possessing real and personal estate, if the assessors omit to tax him; though such omission is not on account of his infirmity or poverty or by mistake, but in order to prevent his acquiring a settlement. 10 *Met.* 115.

37. If one own a farm, and reside thereon ten years, paying the taxes five years, he will acquire a settlement in the town, notwithstanding he have a family in another State, which he occasionally visits. 13 *Mass.* 501.

38. The payment of a highway tax for five years, coupled with the prescribed term of residence, gives a settlement. 16 *Mass.* 235.

39. A person does not acquire a legal settlement by residing in a town ten years together and paying taxes for any five of those ten years, if within that time he is committed to gaol and while there applies for and receives relief as a pauper from the gaoler. 12 *Pick.* 1.

40. The settlement is gained even though the wife of the pauper receives assistance in another town, without her husband's knowledge. 19 *Pick.* 480.

41. The fourth mode of acquiring a settlement under the statute of 1793, ch. 34, was the following:—

"Any person of twenty-one years of age being a citizen of the United States, having an estate of inheritance or freehold in the town where he dwells and has his home, of the clear yearly income of *three pounds*, and taking the rents and profits thereof three years successively, whether he lives thereupon or not, shall thereby gain a settlement therein."

As many settlements were gained under this provision between February 11th, 1794, and February 21st, 1822, we will notice some of the expositions of it by the Court.

42. If a person was lawfully in possession of an estate as above described, taking the rents and profits, he gained a settlement, although his title to the estate was defeasible. 11 *Mass.* 327.

43. The clear yearly income, must have been *three pounds* free from all charges, and if the estate was mortgaged the interest of the mortgage must have been deducted. 6 *Mass.* 50. 11 *Mass.* 327.

44. The annual income must have been three pounds, each and every year, otherwise the estate did not communicate a settlement. 3 *Pick.* 198.

45. It is necessary that the owner should have dwelt and had his home in the town where the estate was situated during the whole of the same three years. 14 *Mass.* 384.

46. If the estate was held in trust, the person for whom it was so held acquired a settlement by taking the rents and profits three years successively. 2 *Pick.* 28.

47. So if a person in possession of an estate of freehold lease the same in payment of a debt, he will be seized notwithstanding the lease, and will be considered as receiving the rents and profits. 5 *Pick.* 449.

48. By the provincial acts, 4th of William & Mary (1692) ch. 13, and 12th and 13th of William 3, (1700 & 1701) ch. 10, explaining by an act in the 13th of George 2, (1739) it was provided, that in addition to obtaining a settlement by the approbation of the town at a meeting of the inhabitants regularly assembled, or the approbation of the selectmen, given under their hands, any person who dwelt in any town twelve months, not having been warned by the constable or other person appointed by the selectmen for that service, to leave the place, should thereby gain a settlement.

No act of the assessors in rating a person subjected the town to the expense of his support, who had not remained there the twelve months, or whose dwelling there had not been approved by the town or selectmen.

In order to prevent a settlement by warning, it was necessary that the name of the person warned, the time of his abode in the town, and the time when the warning was given should be returned to the Court of Quarter Sessions. 4th William and Mary ch. 13.

49. The "warning out laws," as they have been called, were repealed on the 10th of April, 1767. From that date

to June 23d, 1789, no settlement could be gained except by approbation of the town at a general meeting of the inhabitants.

50. The statute passed June 23d, 1789, after confirming settlements then gained, provided the following modes of acquiring them:—

I. "Every person being a citizen of the Commonwealth, who shall be seized of an estate of freehold in the town, of the clear annual income of *three pounds*, and shall reside thereon, or within the same town, occupying and improving the same in person for the space of *two whole years*, shall thereby gain a settlement." *Stat.* 1789, *ch.* 14, § 1.

II. Any citizen of this Commonwealth, who shall have and obtain the vote of any town or district at a regular meeting, to be admitted and received an inhabitant thereof, shall, from and after the passing such vote, in case such citizen shall there reside and dwell, be deemed and taken to be an inhabitant of the same. *Stat.* 1789, *ch.* 14, § 2.

III. Every woman, by intermarrying with an inhabitant of any town or district, shall by such marriage be deemed and taken to be an inhabitant of the same town or district with her husband; and children born in wedlock at the time of their birth, and afterwards, shall be deemed and taken as inhabitants of the same town or district with their parents; and children otherwise born, shall be deemed and taken to be inhabitants with the mother, until they shall have obtained a legal settlement or habitancy in some other town or district; but no person shall have more than one place of legal settlement at one and the same time, but upon obtaining a new place of settlement, shall be deemed and taken voluntarily to have relinquished any former one. *Ib.* § 3.

Other modes of acquiring settlements were presented, but the statute was repealed before settlements could have been gained under them.

The statute was repealed on the eleventh of February, 1794.

51. No person who had begun to acquire a settlement, by the laws in force at and before the time when the provisions of the revised statutes took effect, in any of the ways in which any time is prescribed for a residence, or the continuance or succession of any other act or acts, shall be prevented or delayed by those provisions; but he shall acquire a settlement by a continuation of the same residence or other act or acts in the same time and manner as if the former laws had continued in force. *R. S. ch.* 45, § 2.

52. Every legal settlement shall continue till it shall be lost or defeated, by acquiring a new one within this state; and upon acquiring such new settlement, all former settlements shall be defeated and lost. *Ib.* § 3.

53. Persons who reside on lands purchased by, or ceded to, the United States, for navy yards, forts, and arsenals, under the Massachusetts statutes, do not thereby gain a settlement for themselves or their children. 1 *Met.* 580.

III. SUPPORT OF PAUPERS.

1. Towns shall support their poor.
2. Powers and duties of overseers of the poor.
3. Further powers of overseers.
4. Towns may provide almshouses.
5. Certain kindred of poor persons, if able, shall support them.
6. Court of common pleas may assess such kindred.
7. " of common pleas may also assess for future expenses.
8. Costs in such proceedings, how taxed.
9. The court may order with whom of such kindred the pauper shall live.
10. Proceedings on complaints made to court of common pleas.
11. Other kindred than those named in the complaint may be summoned.
12. Court may make new orders from time to time
13. Overseers to provide for immediate relief of strangers, &c., and their remedy.
14. Town relieving wife may call upon her husband without resorting to the town of his settlement.
15. It is sufficient that the person relieved was in distress under such circumstances as to require immediate aid.

16. When a recovery shall establish the fact of settlement.
17. Towns removing a pauper within thirty days, to pay one dollar a week only.
18. The removal a condition precedent which must be strictly performed to exempt town from paying more than one dollar a week.
19. Town of settlement not liable to pay for trouble of overseers in providing for pauper.
20. Overseers shall support, and in case of decease, bury indigent strangers. Remedy therefor.
21. Foreign paupers may be conveyed from the state to the place where they belong.
22. Towns liable to their inhabitants, after notice, &c.
23. Towns are liable to inhabitants of other towns.
24. It is no defence to an action of an inhabitant, that an individual is liable.
25. Verbal notice sufficient.
26. Paupers may be removed to places of settlement.
27. Process in cases of removals. If a removal is not made or objected to by the town notified, then, &c.
28. Effect of notifications, &c. to towns, sent by mail.
29. Notice how it may be signed.
30. When new notice is necessary.
31. Answer to insufficient notice when a waiver.
32. Provision for paupers in unincorporated places.
33. Penalty for leaving paupers in towns to which they do not belong, with intent, &c.
34. Penalty on shipmasters for landing convicts, &c., from other states.
35. Overseers or persons by them authorized may prosecute, &c.
36. Who shall not be considered state paupers.
37. Accounts for supporting state paupers, when made and how vouched.
38. Rates of charge for state paupers.
39. Construction of the two preceding sections.
40. Particulars of the account for state paupers.
41. Overseers, &c. to return to secretary of Commonwealth a statement respecting paupers; questions that are to be answered in the return.
42. Penalty on overseers, &c. for not making return.
43. Overseers empowered to take effects of deceased paupers, and apply them to reimburse expenses.
44. Support of paupers in the house of correction.

1. EVERY town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof, and may raise moneys therefor, and for their employment, in the same way, that moneys for other town charges are raised. *R. S. ch.* 46, § 1.

2. The overseers of the poor shall have the care and oversight of all the poor and indigent persons, so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported and employed at the charge of such town, either in the workhouse, or almshouse, provided by the town, or in such other manner as the town shall direct, or otherwise at the discretion of said overseers. *Ib.* § 2.

3. The overseers of the poor shall have the same power and authority over persons who may be placed under their care, which directors or masters of workhouses have over persons committed thereto, by force of the provisions concerning workhouses. *Ib.* § 3. *See Title, "Workhouses."*

4. Any town may erect or provide an almshouse, for the reception and employment of their poor; or any two or more towns may, at their joint charge and for their common benefit, erect or provide such a house, in like manner as they are authorized to join in providing a workhouse. *Ib.* § 4.

5. The kindred of any such poor person, if any he shall have in the line of degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living within this state, and of sufficient ability, shall be bound to support such pauper, in proportion to their respective ability. *R. S. ch.* 46, § 5.

6. The court of common pleas in the county, where any one of such kindred to be charged shall reside, upon complaint made by any town, or by any kindred, who shall have been at any expense, for the relief and support of such pauper, may, on due hearing, either upon the appearance or default of the kindred supposed to be chargeable, assess and apportion, upon such of the kindred as they shall find to be of sufficient ability, and in proportion thereto, such sum as they judge reasonable, for or towards the support of the pauper, to the time of such assessment, and may enforce payment thereof, by an execution in common form; provided, that such assessment shall not extend to any expense for relief, afforded more than six months, previous to the filing of the complaint. *Ib.* § 6.

7. The said court may further assess and apportion, upon the said kindred, such weekly sum, as they shall judge sufficient for the future support of the pauper, to be paid

quarter yearly, until the further order of court; and upon application, from time to time, of the town, or kindred to whom the same shall have been ordered to be paid, the clerk of said court shall issue and may renew an execution, for the arrears of any preceding quarter. *Ib.* § 7.

8. When the court shall adjudge two or more of the kindred of any pauper to be of sufficient ability to contribute to his support, they shall tax no more costs against any one respondent, than shall have been occasioned by his default or separate defence. *Ib.* § 8.

9. The said court may further order, with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall judge proper, having regard to the comfort of the pauper, as well as the convenience of the kindred. *Ib.* § 9.

10. The complaint to be made by any town, or kindred of a pauper, as provided in this chapter, shall be filed in the clerk's office of the court of common pleas, and a summons shall be thereupon issued, requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer, who is qualified to serve civil process between the same parties, and shall be served like an original summons, fourteen days at least before the sitting of the court to which it is returnable. *Ib.* § 10.

11. Upon a suggestion that there are other kindred of ability, not summoned in the original process, such other kindred may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them, in the same manner as if they had been summoned upon the original complaint. *Ib.* § 11.

12. The said court may take further order, from time to time, in the premises, upon application of any party interested, and may alter such assessment and apportionment,

according to the circumstances; and upon all such complaints, they may award costs to either party, as justice shall require. *Ib.* § 12.

13. The said overseers, in their respective towns, shall also provide for the immediate comfort and relief of all persons, residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the town to be charged, as also of their removal, or of their burial, in case of their decease, may be sued for and recovered, by the town incurring the same, against the town which is liable therefor, in an action at law; provided that such action for damages be instituted within two years after the cause of action shall have arisen, but not otherwise. *Ib.* § 13. *See* 8. *Met.* 513.

14. A husband is always liable to support his wife, if he is of ability to support her; and the town furnishing relief to her may immediately call upon him without resorting to the town where his settlement is, the remedy being cumulative. 14 *Mass.* 227.

15. In an action for expenses incurred in relief of a person, it is competent to prove that if the person so relieved was not a pauper, he was in distress under such circumstances as to require immediate aid from the plaintiffs. 11 *Pick.* 459.

16. A recovery in such civil action shall bar the town, against which it shall be had, from disputing the settlement of such pauper with the town so recovering, in any future action brought for the support of such pauper. *R. S. ch.* 46, § 14.

17. When any person shall be supported in any town other than that in which he has his settlement, the town

that is liable for his support shall not, in any case, be required to pay therefor more than at the rate of one dollar a week; provided the town that is liable for the support of the pauper shall cause him to be removed, within thirty days from the time of receiving legal notice that such support has been furnished. *Ib.* § 15.

18. The actual removal of a pauper by the town in which he has a settlement within thirty days after legal notice of relief being furnished him by another town, is a condition precedent which must be strictly performed, in order to exempt the former town from a greater expense than one dollar per week. Where the pauper was so sick that he could not be removed with safety, it was held the town affording relief had a right to recover the amount of its expenses reasonably incurred. 7 *Pick.* 155. *See also* 4 *Pick.* 45.

19. A town is not liable to pay a charge for the trouble of overseers, in providing for a pauper in another town. 11 *Mass.* 327.

20. The overseers of the poor of each town shall also relieve, support, and employ all poor persons, residing or found in their towns, having no lawful settlements within this state, and in case of their decease, shall decently bury them; the expense whereof may be recovered of their kindred, if they have any, chargeable by law for their support in the manner hereinbefore provided; otherwise it shall be paid out of the treasury of the Commonwealth, as hereinafter provided. *R. S. ch.* 46, § 16.

21. Upon complaint of the said overseers of any town, any justice of the peace may, by warrant directed to, and to be executed by, any constable, or any other person therein designated, cause such pauper to be sent and conveyed, at the expense of the state, by land or water, to any other state, or to any place beyond sea, where he belongs, if the justice thinks proper, and if he may be con-

veniently removed; but if he cannot be so removed, he may be sent to, and relieved and employed in, the house of correction or workhouse, at the public expense. *Ib.* § 17.

22. Every town shall be held to pay any expense, which shall be necessarily incurred, for the relief of a pauper, by any person, who is not liable by law for his support, after notice and request made to the overseers of the said town, and until provision shall be made by them. *Ib.* § 18.

23. Under the statute of 1793, c. 59, § 13, towns were liable to their own inhabitants only; under the revised statutes, they are liable to any person after due notice and request. *See* 7 *Met.* 214.

But towns are liable only for expenses incurred in the support of paupers found, or residing in the town. 8 *Met.* 492.

24. It is no defence to an action, brought by an inhabitant against his town, that some individual is liable to support the pauper. 15 *Mass.* 286.

25. A verbal notice and request to the overseers of the poor to provide for a destitute person is sufficient. 15 *Mass.* 286.

26. The said overseers may, in all cases, send a written notification, stating the facts relating to any person actually become chargeable to their town, to one or more of the overseers of the place, where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order, directed to any person therein designated who is hereby authorized to execute the same. *R. S. ch.* 46, § 19.

27. If such removal is not effected by the last mentioned overseers, within two months after receiving such notice, they shall, within said two months, send a written answer, stating therein their objections to the removal of the pauper, signed by one or more of them, to one or more of the overseers, requesting such removal; and if

they shall fail so to do, the overseers, who requested the removal of the pauper, may cause him to be removed to the said place of his supposed settlement, by a written order directed to any person therein designated, who is hereby authorized to execute the same; and the overseers of the town, to which the pauper is so sent, shall be obliged to receive and provide for him, and their town shall be liable for the expenses of his support and removal, to be recovered by an action by the town incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action. *Ib.* § 20.

28. The notification and answer, mentioned in the two preceding sections, may be sent by mail; and such notification or answer, directed to the overseers of the poor of the town, intended to be notified or answered, (the postage being paid and endorsed thereon,) shall be deemed a sufficient notice and answer, and shall be considered as delivered to the overseers, to whom it is directed, at the time when it is received in the post office of the town, to which it is directed, and in which the said overseers reside. *Ib.* § 21.

29. The notification, if signed by one of the overseers and purporting to be by order of the whole, or if signed by a majority, will be sufficient. 6 *Mass.* 501. 8 *Mass.* 104. 4 *Met.* 433.

30. Where an action has been commenced for the recovery of the expenses incurred in the support of a pauper, a second action cannot be maintained for the recovery of expenses subsequently incurred in the support of the same pauper, without a new notice, although the first action be pending when the second is commenced. 4 *Pick.* 358.

31. But an answer to an insufficient notice will be considered as a waiver of the deficiency, if no objection is taken on that account. 10 *Pick.* 22. 4 *Met.* 438. 12 *Mass.* 307. *Ib.* 262. 16 *Mass.* 102. 9 *Met.* 587.

32. The inhabitants of unincorporated places, who are or shall be required to assess taxes upon themselves towards the support of government, or for defraying the charges of any county, shall be vested with the like powers and be under the same obligations, so far as relates to the relief and support of poor persons falling into want or distress, or who may be in need of immediate assistance within such places respectively, as towns may have or be subject to; and the like proceedings shall be had in such cases, by or against such places, as may be had by or against towns. *Stat.* 1837, *ch.* 178, § 1.

The assessors of such unincorporated places shall be held to perform all the duties, and shall have all the powers of overseers of the poor of towns, for the purpose of carrying into effect the foregoing provisions. *Ib.* § 2.

33. If any person shall bring into and leave any poor and indigent person in any town of this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his support, he shall forfeit a sum not exceeding one hundred dollars for any such offence. *R. S. ch.* 46, § 24.

34. If any master or other person, having charge of any vessel, shall therein bring into, and land, or suffer to be landed in, any place within this state, any person, before that time convicted, in any other state or in any foreign country, of any infamous crime, or any for which he hath been sentenced for transportation, knowing of such conviction, or having reason to suspect it, or any person of a notoriously dissolute, infamous and abandoned life and character, knowing him to be such, he shall, for every such offence, forfeit a sum not exceeding five hundred dollars. *Ib.* § 25.

35. In all actions and prosecutions founded on the provisions of the forty-sixth chapter of the revised statutes, included under this title "Support of Paupers," the over-

seers of the poor of any town, or any person, by writing under their hands appointed, shall and may appear, prosecute or defend the same to final judgment and execution, in behalf of such town. *Ib.* § 26.

36. No male person over the age of twelve years, while of competent health to labor, shall be considered a state pauper, and entitled to support as such. *Ib.* § 30.

37. All claims against the Commonwealth, presented for allowance by any city, town, or keeper of any house of correction, for the support of state paupers, shall be so made as to include all claims for such charges, up to the first day of January annually; and no charge, which shall not be presented within the month of January, shall hereafter be allowed for the support of any such pauper; and the selectmen, or overseers of the poor, of any town, or the keeper of any house of correction, and the directors of the house of industry in the city of Boston, respectively, shall certify that the whole amount charged in their account has been expended, for the support of the persons named in the same, for the time therein specified. *Ib.* § 31.

38. All accounts against the Commonwealth, for the support of paupers, as aforesaid, shall be made out and charged at a fixed price by the day, and the allowance shall not exceed in any case seven cents a day, for the support of paupers over twelve years of age, and four cents a day, for the support of paupers under that age, and five dollars for the funeral expenses of each pauper over twelve years of age, and two dollars and fifty cents, for the funeral expenses of each pauper under that age. *Ib.* § 32.

39. Under the two preceding sections, if the earnings collectively of all the State paupers supported by a town, during any year, together with the stated allowance made by the Commonwealth, for each of them, did not exceed the expenses collectively of supporting them all during the

year, it was held that the town was entitled to the whole of such earnings and allowances. 20 *Pick.* 267.

A town in stating an account with the Commonwealth, as to the support of State paupers, is bound to credit the value of the paupers' labor only, and not any share of the profits, if there be any, which the town derives from their labor. 4 *Met.* 35.

40. All accounts made out against the Commonwealth, for the support of State paupers, shall show the name of each pauper, his age, and place of nativity, and the time when he first came into this State, the time when he became chargeable, and when he ceased to be so, or in case of his death, the time of his death, or if he still continues chargeable, the time to which such charge is made, and the number of days for which each of said paupers has been chargeable; and in all cases where said charge is for the support of any pauper, not already mentioned on the list of State paupers, said account shall be accompanied by a certificate of the overseers of the poor of the towns, and in Boston a certificate of the directors of the house of industry of that city, stating that neither of said paupers has a legal settlement in this State, and also that he has no kindred within this State obliged by law to support him; and in all such certificates, the said overseers, and the directors of the house of industry in the city of Boston, respectively, shall state that they made the same on the best evidence they could obtain, and that no part of the account is for the support of any person over the age of twelve years, while of competent health to labor. *R. S. ch.* 46, § 33.

41. The overseers of the poor of the several towns in this Commonwealth, and the directors of the house of industry in the city of Boston, shall, on or before the third Wednesday in November, of each year, make out and return to the secretary of this Commonwealth, a statement

of the paupers in said town, having reference to the condition of the poor for the year ending on the first day of said month; which return shall contain true and correct answers to the following enquiries, viz: What number of persons have been relieved or supported as paupers during the year in your town? Of these how many have a legal settlement in your town, or elsewhere in this Commonwealth? How many State paupers does your town support? How many of these are foreigners? How many of the foreigners are from England and Ireland? Have you an alms house? What number of acres of land is attached to your alms house? What is the estimated value of your alms house establishment? What number of persons have been relieved in your alms house during the year? What is the average number supported in alms house? What is the average weekly cost of supporting each pauper in alms house? What number of persons in your alms house who are unable to perform any kind or amount of labor? What is the estimated value of all labor performed by paupers in your alms house? How many persons do you aid and support out of alms house? What is the average weekly cost of supporting paupers out of alms house? How many does your town support or relieve who are insane? How many do you relieve or support who are idiots? What proportion of your paupers, in your opinion, have been made dependent by intemperance in themselves, or those who ought to have been their supporters? What number of your foreign paupers have come in to this Commonwealth within one year? What is the total net amount of expense of supporting or relieving paupers in your town for one year, including interest on your alms house establishment? What amount does your town receive from the treasury of this Commonwealth towards the support of State paupers? And the secretary of this Commonwealth, shall, in the month of September annually, furnish the

overseers of the poor of each town with a blank form of return, which shall contain in substance the foregoing interrogatories. *St.* 1837, *ch.* 194, § 1. *St. of* 1841, *ch.* 116, § 1.

42. If the overseers of the poor of any town in this Commonwealth, or the directors of the house of industry in the city of Boston, shall refuse or neglect to make the return as aforesaid, they shall forfeit a sum not exceeding one hundred dollars, to be recovered by indictment in any court of competent jurisdiction. *Ib.*

43. Upon the death of any pauper, who, at the time of his decease, shall be actually chargeable to any town within this Commonwealth, the overseers of the poor of such town may take into their possession all the personal property belonging to such pauper. And if no administration shall be taken upon the estate of such pauper within thirty days after his decease, the said overseers may sell so much of the said property as may be necessary to repay the expenses incurred for such pauper. And if any part of such property shall be withheld from the said overseers, they shall have the same remedy for the recovery of such property, or the value thereof, that an administrator of the estate of the said pauper might have in like case. *St.* 1837, *ch.* 54.

44. Whenever the overseers of the house of correction in any county shall certify that any sum is due the keeper thereof for the support and employment of any person who has not sufficient estate to pay the same, and such person shall have no parent, master, or kindred, liable by law to maintain him, the same may be demanded and recovered of the town wherein he shall have his lawful settlement, and upon refusal or neglect to make payment, for the space of thirty days after the same shall have been demanded, in writing, of any overseer of the poor of the town liable by law therefor, the said master or keeper, at any

time within two years after his account shall have been so certified, and not afterwards, may commence and maintain his action at law for the same, against the town so liable. *R. S. ch.* 143, § 16.

IV. LUNATIC PAUPERS.

1. Commitment of lunatics furiously mad.
2. Judges committing to certify the place of residence of the lunatic.
3. Selectmen to be notified of the application for commitment.
4. Pauper lunatics may be committed by overseers of the poor with consent of trustees—at what rates to be supported.
5 Expenses for supporting lunatics, by whom to be paid, and how recovered.
6. Remedy of towns, if lunatic had a settlement in some other town in this state.
7. Provision for removing incurable lunatics from the hospital; terms and mode of removal.
8. Provisions for recommitment of those who are not comfortably supported.
9 Trustees of Hospitals may remove patients to the towns of their residence, when they cease to be dangerous.
10. Lunatics may be removed to Jails or houses of correction when Hospital is full.
11. In such cases towns liable for their support.
12. Provision for persons insane but not furiously mad.
13. Towns liable for their support in certain cases.

1. The judges of probate in the several counties, except Suffolk, and in that county, the judge of the municipal court, may commit to the hospital any lunatic, who in their opinion is so furiously mad, as to render it manifestly dangerous to the peace and safety of the community, that he should be at large. *R. S. ch.* 48, § 6.

In case of the absence, sickness, or death of the judge of probate of any county in this Commonwealth, except the county of Suffolk, any justice of the supreme judicial court, or of the court of common pleas, may commit to the State Lunatic Hospital any lunatic furiously mad, in such county, in the same manner and upon the same proceedings as are now provided by law for the commitment of lunatics to said hospital by judges of probate. *St.* 1839, *ch.* 149, § 3.

When any person, held in prison on a charge of having committed an indictable offence, shall not be indicted by the grand jury, by reason of insanity, or when any person having been indicted, shall be acquitted by the jury by reason of insanity, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the state lunatic hospital. *R. S. ch.* 136, § 15. *Ib. ch.* 137, § 12.

2. In all cases the judges of probate and the judge of the municipal court, respectively, shall certify in what town the lunatic resided, at the time of his commitment, and the judges of the supreme judicial court, and the court of common pleas, respectively, shall certify in what town he resided at the time of the arrest, in pursuance of which he was held to answer before those courts; and such certificate shall for the purposes hereinafter stated, be conclusive evidence of his residence.

3. Any person, who shall apply for the commitment of any lunatic, under the above provisions, shall first give notice, in writing, to any one or more of the selectmen of the town, or to the mayor of the city, where such lunatic resides, of his intention to make such application; and satisfactory evidence, that such notice has been given, shall be produced to the said judges, respectively, at the time of making such application. *R. S. ch.* 48, § 7.

4. Any lunatic, who is supported as a town pauper, may, with the consent of the trustees, be committed to the hospital, by the overseers of the poor of the town, and shall be kept for a sum, which shall not in any case exceed the actual expenses of his support; and the trustees may also, in their discretion, receive into the hospital, for a less sum, any poor persons suffering under recent insanity, whether supported or not by any town or city. *Ib.* § 8.

5. The expenses of the hospital, for the support of all

lunatics committed by any of the judicial officers mentioned above, or by virtue of a proclamation of the governor, or by a resolve of the legislature, or by two justices of the peace, and of the quorum, shall be paid by the town, in which lunatics had their residence at the time of their commitment, unless in cases where other sufficient security, to the satisfaction of the trustees, shall have been taken for such support; and if any town or city shall neglect or refuse to pay whatever sum may be charged and due, according to the by-laws of the hospital, on account of the support of any such patient at the hospital, or for the removal of any patient, whom the trustees are authorized by law to remove, for the space of thirty days after the same shall have been demanded, by the treasurer, in writing, of the selectmen of the town, or of the mayor and aldermen of the city liable therefor, the same may be recovered, for the use of the hospital, in an action to be brought in the name of the treasurer against such delinquent town, in which action the declaration may be in a general indebitatus assumpsit, and judgment shall be rendered for such a sum as shall be found due, with interest from the time of the demand thereof made as aforesaid. *R. S. ch.* 48, § 9. *St. of* 1837, *ch.* 228, § 7.

If it shall be made to appear that the lunatic for whom payment is demanded, has no settlement within this Commonwealth, the town of his residence shall not be liable for the expense incurred on his account. *St. of* 1837, *ch.* 288, § 7.

6. Every town, which shall pay any expenses for the support or removal of any lunatic, under the provisions of the preceding section, shall have the like right and remedies, to recover such sums, with interest and costs, as if such expenses had been incurred in the ordinary support of the lunatic. *R. S. ch.* 48, § 10.

Whenever any lunatic or insane person shall be com-

mitted to the State Lunatic Hospital, from any town wherein he has not a legal settlement, and such town shall pay the expense of his support at said hospital, such town may recover from the town in which he has a legal settlement, the full amount of all expenses so paid to said hospital. *St. of* 1841, *ch.* 77.

7. Either of the justices of the supreme judicial court, or of the court of common pleas, at any term held within and for the county of Worcester, or the judge of probate of said county, may on application in writing for the discharge from said hospital of any lunatic who shall have remained there a sufficient time to make it appear that he is incurable, cause such lunatic to be delivered to the agents of any town in which he may have his legal settlement, or to the friends of such lunatic, when, in the opinion of either of said justices, or of said judge of probate, it would not be to the injury of the person so confined, and when it shall be made to appear that such person would be comfortably and safely provided for, by any parent, kindred, friend, master, or guardian, or by any town or city in which he may have a legal settlement. *St. of* 1839, *ch.* 149, § 1.

8. If at any time after the discharge of an incurable lunatic, as above provided, it shall be made to appear, on complaint, by any person under oath, to the judge of probate for the county in which such lunatic has his legal settlement, or shall be placed, that he is not comfortably supported, or that the public safety is endangered by him, it shall be the duty of said judge to order his recommitment to said hospital. *Ib.* § 2.

9. The Trustees of the Hospital may remove any idiot or other patient to the town, where the judge or court committing him shall certify that he resided, whenever, in the opinion of the trustees, he shall cease to be dangerous, within the intent of the law, and shall not be susceptible

of mental improvement, by remedial treatment at the hospital; provided, that such town, after reasonable notice, in writing, from the trustees, shall not remove such idiot or other patient. *See R. S. ch.* 48, § 14.

10. If, at any time, the lunatics in the hospital shall be so numerous that they cannot all be suitably accommodated therein, and in the opinion of the trustees, it shall be proper that some of them should be removed therefrom, the trustees may remove, to the jail or houses of correction in the respective counties, from which such lunatics were sent, so many of them as may be necessary, in order to afford suitable accommodation for the remainder of them. *Ib.* § 15.

11. For reimbursing any expenses, incurred by the city of Boston, the town of Nantucket, or by any county, for the support of any lunatic, removed as is provided in the preceding section, the said city, town, and county, respectively, if such lunatic had any legal settlement in this State, shall have the like remedy against the town or city, where his settlement is, as towns have against each other, to recover the expenses of supporting paupers, and subject to the like conditions and limitations. *Ib.* § 16.

12. Persons who are idiots or lunatics, or insane, but not furiously mad, may be confined in an apartment provided for that purpose in the house of correction in each county. The order for confinement may be made by any two justices of the peace, one of whom shall be of the quorum, or by any police court. *See Stat. of* 1836, *ch.* 223.

13. Where an insane person who is not able to pay for his own support, is confined in a house of correction, under *St.* 1836, *ch.* 223, the town in which he has a settlement is liable for his support in such house, if he have no parent, master, or kindred, liable by law to maintain him. *Ib.* 5 *Met.* 54.

The sum to be paid is to be determined by the county commissioners. *St. of* 1836, *ch.* 223, § 2.

SCHOOLS.

I. WHAT SCHOOLS TO BE SUPPORTED BY TOWNS.

1. What Schools shall be provided by every town.
2. What schools by towns of 100 families.
3. What " " of 150 families.
4. What " " of 500 families.
5. Additional schools in towns of 500 families; except, &c.—in towns of 4000 inhabitants.
6. Towns of less than 500 families authorized to maintain schools mentioned in 5th section.
7. Schools of 50 scholars to have female assistants unless, &c.
8. Towns may raise money for support of schools.
9. Extent of this power.
10. Towns and cities authorized to maintain schools for the instruction of adults.
11. Money for,—how assessed, levied, collected, and paid over.

1. In every town in this Commonwealth, there shall be kept, in each year, at the charge of the town, by a teacher or teachers of competent ability, and good morals, one school for the instruction of children in orthography, reading, writing, English grammar, geography, arithmetic, and good behavior, for the term of six months, or two or more such schools for terms of time which shall together be equivalent to six months. *Stat. of* 1839, *ch.* 56, § 1.

2. In every town, containing one hundred families or householders, there shall be kept in each year one such school, for the term of twelve months, or two or more such schools, for terms of time that shall together be equivalent to twelve months. *R. S. ch.* 23, § 2.

3. In every town, containing one hundred and fifty families or householders, there shall be kept in each year, two such schools, for nine months each, or three or more such schools, for terms of time, that shall together be equivalent to eighteen months. *Ib.* § 3.

4. In every town, containing five hundred families or householders, there shall be kept in each year, two such schools for twelve months each, or three or more such schools, for terms of time, that shall together be equivalent to twenty-four months. *Ib.* § 4.

5. Every town, containing five hundred families or householders, shall, besides the schools prescribed in the preceding section, maintain a school, to be kept by a master of competent ability and good morals, who shall in addition to the branches of learning before mentioned, give instruction in the history of the United States, book-keeping, surveying, geometry and algebra; and such last mentioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places in the town, as the said inhabitants at their annual meeting shall determine; and, in every town containing four thousand inhabitants, the said master shall, in addition to all the branches of instruction, before required in this chapter, be competent to instruct in the Latin and Greek languages, and general history, rhetoric and logic. *Ib.* § 5. *St. of* 1840, *ch.* 76. *St. of* 1848, *ch.* 223.

6. Any town, containing less than five hundred families or householders, may establish and maintain such a school, as is first mentioned in the fifth section, for such term of time, in any year, or in each year as they shall deem expedient. *R. S. ch.* 23, § 6.

7. In every school in this Commonwealth containing fifty scholars as the average number, the school district or town to which such school belongs, shall be required to employ a female assistant or assistants, unless such school district or town shall, at a meeting regularly called for that purpose, vote to dispense with the same. *Stat. of* 1839, *ch.* 56, § 1.

8. The several towns are authorized and directed, at their annual meetings, or at any regular meeting called for the purpose, to raise such sums of money, for the support of the schools aforesaid, as they shall judge necessary; which sums shall be assessed and collected in like manner as other town taxes. *R. S. ch.* 23, § 9.

9. The power of towns to vote and grant money for the support of schools is not restricted to the amount that is necessary to support the schools, which the first five sections of this title require them to support, but they have power to vote and grant money for the support of other town schools, for instruction in branches of knowledge which those sections do not require to be taught. 10 *Met.* 508.

10. In addition to the grants of money for common schools which cities and towns are now, by law, authorized to make, any city or town may appropriate such further sums of money as it may deem expedient, for the support of schools for the instruction of adults in reading, writing, English grammar, arithmetic and geography. *Stat. of* 1847, *ch.* 13, § 1.

11. Such moneys shall be assessed, levied, collected and paid into the treasury, in the same manner that other town or city taxes are, and shall then be at the disposal of the school committee of the town or city, to be expended by them for the purposes aforesaid, in such manner as they may deem expedient. *Ib.* § 2.

II. SCHOOL BOOKS.

1. Authority of committee as to school books.
2. Scholars to be supplied by their parents, &c., with the books prescribed.
3. Books may be provided by school committee.
4. What constitues a compliance with the requisitions of the last section.

5. Books to be furnished to scholars at expense of the town.
6. How committee may procure books.
7. Expense of books so supplied, to be taxed to parents, &c.
8. If parents, &c., are unable to pay, such tax for books may be wholly or partially omitted.
9. Books not to be bought, which favor any particular sect of christians.

1. The school committee of each town shall direct what books shall be used in the several schools kept by the town; and may direct what books shall be used in the respective classes. *Ib.* § 17.

2. The scholars at the town schools shall be supplied by their parents, masters or guardians, with the books prescribed for their classes. *Ib.* § 18.

3. The school committee of each town may procure, at the expense of the town, or otherwise, a sufficient supply of such class books, for all the schools aforesaid, and shall give notice of the place where such books may be obtained; and the books shall be supplied to the scholars, at such prices, as merely to reimburse the expenses of the same. *Ib.* § 19.

4. The requisition of the Statute in the above section, in regard to the duty of the committee in giving notice of the place where such books may be obtained, is substantially complied with, if the books are placed in the hands of the schoolmasters, with notice to the schools that they may be obtained of the masters. 13 *Pick.* 229.

5. In case any scholar shall not be furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee at the expense of the town. *R. S. ch.* 23, § 20.

6. The committee may either get the books on the credit of the town, or may buy them themselves and thereby make themselves creditors of the town. 13 *Pick.* 229.

7. The school committee shall give notice, in writing, to the assessors of the town, of the names of the scholars so supplied by them with books, and of the books so furnished, the prices thereof, and the names of the parents,

masters, or guardians, who ought to have supplied the same; and said assessors shall add the price of the books so supplied, to the next annual tax of such parents, masters or guardians; and the amount so added, shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes. *R. S. ch.* 23, § 21.

8. In case the assessors shall be of opinion, that any such parent, master, or guardian, is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to the annual tax of such parent, master or guardian, according to their opinion of his ability to pay. *Ib.* § 22.

9. The school committee shall never direct to be purchased or used in any of the town schools, any school books, which are calculated to favor the tenets of any particular sect of christians. *Ib.* § 23.

III. SCHOOL COMMITTEE.

1. School committee to be chosen annually.
2. Additional members of, in towns of more than 4000 inhabitants.
3. Duty of committee where school is kept for benefit of all the inhabitants.
4. Shall select and contract with teachers, unless, &c.
5. To examine as to qualifications of instructors.
6. Instructors, not to be paid unless the committee certify, &c.
7. Committees may dismiss teachers.
8. Committee, to decide on admission of scholars into school kept for the whole town.
9. Committee to visit all the district schools.
10. Shall keep a record book, record their votes, &c. and deliver it to their successors.
11. Registers to be kept, &c.
12. Compensation of Committees.
13. In cities and towns where the school committee is required by law to be elected in the months of February, March or April, term of office extended for certain purposes beyond the year.
14. Duty of committees in relation to records of births.
15. Committees to prosecute for breaches of certain provisions of law.
16. Children under 15 years of age not to be employed in factories, unless they have attended school 3 months in the preceding year.
17. Penalty on owners, &c., for employing children contrary to the preceding section—and to what use and how recoverable.

1. The inhabitants of every town shall, at their annual meeting, choose, by written ballots, a school committee, consisting of three, five, or seven persons, who shall have the general charge and superintendence, of all the public schools in such town. *R. S. ch.* 23, § 10.

2. Any town, containing more than four thousand inhabitants, may choose an additional number, not exceeding six, on such committee. *Ib.* § 12.

3. In any town, containing five hundred families, and in which a school shall be kept for the benefit of all the inhabitants, the school committee, chosen under the preceding sections, shall perform all the like duties, in relation to such school, the house where it shall be kept, and the supply of all things necessary therefor, which the prudential committee of a school district may perform in such district. *Ib.* § 11.

4. The school committee shall select and contract with the teachers for the town and district schools; *provided, however*, that the teachers for the town and district may be selected and contracted with by the prudential committee as heretofore, whenever the town shall so determine. *Ib.* § 2.

5. The school committee shall require full and satisfactory evidence of the good moral character of all instructors, who may be employed in the public schools in their town, and shall ascertain, by personal examination, their literary qualifications and capacity for the government of schools. *R. S. ch.* 23, § 13.

6. Every instructor of a town or district school shall obtain, of the school committee of such town, a certificate in duplicate of his qualifications, before any payment is made to such instructor on account of his services. *Ib.* § 14.

7. The school committee of any town is authorized to dismiss from employment any teacher in such town, when-

ever the said committee may think proper, and from the time of such dismissal such teacher shall receive no further compensation for services rendered in that capacity. *St.* 1844, *c.* 32.

8. The school committee shall determine the number and qualifications of the scholars, to be admitted into the school, kept for the use of the whole town, as aforesaid, and visit such school, at least quarter yearly, for the purpose of making a careful examination thereof, and of ascertaining that the scholars are properly supplied with books; and they shall, at such examination, inquire into the regulations and discipline of the school, and the habits and proficiency of the scholars therein. *R. S. ch.* 23, § 15.

9. The school committee, or some one or more of them, shall, for the purposes aforesaid, visit each of the district schools in their town, on some day during the first or second week after the opening of such schools, respectively, and also on some day during the two weeks preceding the closing of the same; and shall also, for the same purposes, visit all the schools kept by the town, once a month, without giving previous notice thereof to the instructors. *Ib.* § 16.

10. The school committee in each town shall be provided with a record book, in which all votes, orders, and proceedings of the committee shall be duly recorded, and said record shall be delivered over by the committees, at the expiration of the year, to their successors in office. *St.* 1838, *ch.* 105, § 3.

11. The Secretary of State is required to transmit register books, sufficient to last for five or more years, and in such form as the Board of Education shall prescribe, to the school committees of the respective towns, to be kept in all the town and district schools in the Commonwealth; and said committees shall cause the registers to be faithfully kept in all said schools, according to the form pre-

scribed; and no school teacher shall be entitled to receive payment for his or her services, until the register for his or her school, properly filled up and completed, shall be deposited with the school committee, or with such person as they may designate to receive it. *St.* 1838, *ch.* 105, § 6. *St.* 1845, *ch.* 137.

12. The members of the school committees, except in the city of Boston, shall be paid by their respective towns, one dollar each per day for the time they shall be actually employed in discharging the duties of their office, together with such additional compensation as the town may allow. *Ib.* § 4. *St.* 1838, *ch.* 105, § 4.

13. In every city and town in the Commonwealth, in which it is required by law that the school committee shall be elected in the month of February, March or April, the school committee of the year preceding such election, shall continue to hold their office, and to discharge the duties thereof, notwithstanding the election of successors, until the winter terms of the several schools shall have closed, and until the certificate, return, and report, as hereinafter provided, shall have been by them made and transmitted to the office of the Secretary of the Commonwealth; *provided, however*, that, in regard to the examination of teachers for the summer schools, the visitation of those schools, and all other duties, except the making and transmitting of the said documents, the term of office of the new committee shall be held to commence immediately after their election to the same. *St.* 1846, *ch.* 223, § 1.

14. The school committee of each city or town shall, annually in the month of May, ascertain from actual inquiry or otherwise, all the births which have happened within such city or town, during the year next preceding the first day of said May, together with the date of the birth, the place of birth, the name of the child, (if it have any,) the sex of the child, name and surname of one or both of the

parents, occupation of the father, residence of the parents, and shall make an accurate return thereof to the clerk of such city or town, on or before the last day of said May; and the said school committee, or other person authorized by them to make such returns, shall be entitled to receive from the treasury of such city or town, five cents for each and every birth so returned. *See St. of* 1844, § 1 & 2.

15. It is the duty of the school committee, to prosecute all breaches of the provisions of the following section. *St.* 1842, *ch.* 60, § 1.

16. No child under the age of fifteen years shall be employed to labor in any manufacturing establishment, unless such child shall have attended some public or private day school, where instructions are given by a teacher qualified according to the first section of title, "What Schools to be supported by Towns," at least three months of the twelve months next preceding any and every year in which such child shall be so employed. *St.* 1836, *ch.* 245, § 1.

17. The owner, agent, or superintendent of any manufacturing establishment, who shall employ any child in such establishment contrary to the provisions of this act, shall forfeit the sum of fifty dollars for each offence, to be recovered by indictment, to the use of the prosecutor. *Ib.* and *St.* 1842, *ch.* 60, § 2.

IV. SCHOOL DISTRICTS.

1. To be corporations for certain purposes.
2. Same subject.
3. Formation of, in each town.
4. Towns have no power to alter limits of districts, &c.
5 May do it to a certain extent.
6. What power given to towns o define limits.
7. How districts must be constituted.
8. Prudential committee in each district.
9 When districts may choose their prudential committees.
10. Prudential committees agents for towns.
11. Prudential committee how chosen by the districts.

12. Clerk shall be chosen and sworn, who shall keep records, &c.
13. Clerk may act as such, though he has removed into an adjoining district.
14. Districts may raise money for the erection of houses and other purposes.
15. Same subject.
16. Districts may raise money for libraries.
17. Clerk liable only for want of integrity; district, for illegality in assessing taxes.
18. Selectmen, to determine the places for school houses, in case, &c.
19. If prudential committee is not chosen, town committee shall perform his duties.
20. Towns may provide school houses, &c., at common expense.
21. Where personal and real estate may be taxed.
22. Property in manufacturing corporations, where taxed.
23. Non residents' estate where taxed.
24. Assessment, when invalid.
25. All lands of any non-resident, to be taxed in one district.
26. School taxes assessed in same manner as town taxes.
27. Money voted to be raised by district, by whom may be assessed.
28. Certificate of clerk to the vote not necessary.
29. Time for assessment only directory to the assessors.
30. Power of assessors in case of an illegal assessment.
31. Vote for raising money to repair or build school-house may be rescinded.
32. When assessment may be made.
33. What valuation to be used.
34. Certificate of district clerk that money was duly voted, binding on town officers.
35. Persons set off to another district after assessment, liable to pay tax.
36. Certain omissions of assessors do not make tax void.
37. What property exempt from taxation.
38. Assessors to issue warrants to collectors.
39. Money raised, to be at the disposal of committees.
40. Collectors, to have same power as in case of town taxes.
41. Treasurers, to have like powers, as in case of town taxes.
42. Assessors, &c., to have same compensation as in case of town taxes.
43. Assessors may abate, as in town taxes
44. If inhabitants of district refuse to raise money, the town may order it.
45. If districts neglect to establish schools, town committee may do it.
46. Selectmen or prudential committee may issue warrants for district meetings.
47. Manner of warning meetings.
48. The districts may direct the mode of calling meetings.

1. Every school district shall be a body corporate, so far as to prosecute and defend in all actions, relating to the property or affairs of the district. *R. S. ch.* 23, § 57.

2. They shall also have power, as a corporation, to take and hold, in fee simple or otherwise, any estate, real or personal, which has been, or may be given to, or purchased by them, for the supporting of a school or schools in the district. *Ib.* § 58.

3. The inhabitants of every town may, at any town meeting, to be called for that purpose, divide their town

into school districts, and determine the limits of such districts; or they may, if they think it expedient, carry into effect the provisions of this chapter, without forming such districts. *Ib.* § 24.

4. But towns have no power to alter the limits of a school district, so far as to destroy the corporation, without its consent, nor so as to annul or impair any contract made with such corporation. 5 *Pick.* 323.

5. Yet a town may alter the limits of districts, so far as may be consistent with their preservation as bodies corporate. *Ib.* 15 *Pick.* 35.

6. The power given to a town to determine and define the limits of school districts, can be executed only by a geographical division of the town.

Where in attempting to define a school district, the town directed that certain persons named should compose the district (the probable intention of the town that the lands occupied by those persons should form the district not being expressed in the town records) it was held that the limitation of the district was merely personal and therefore invalid. 7 *Pick.* 106. 12 *Pick.* 206. 7 *Met.* 219.

7. The districts must be so constituted, as to include all the inhabitants of the town: so that where a town after defining an east and west district, proceeded to direct that certain individuals by name should have liberty to send their children to schools in adjoining towns, the districting was held to be invalid. 12 *Pick.* 206.

8. Every town, which is or may be divided into school districts, shall, at their annual meeting, in addition to the school committee for the town, choose one person, resident in each school district, to be a committee for that district, and to be called the prudential committee; who shall keep the school house of such district in good order, at the expense of the district; and, in case there be no school house, provide a suitable place for the school of the district, at the

expense thereof; provide fuel, and all things necessary for the comfort of the scholars therein; select and contract with a school master for the district; and give such information and assistance to the school committee of the town, as may be necessary to aid them in the discharge of the duties required of them. *R. S. ch.* 23, § 25. *See* § 4.

9. Whenever a town shall determine that teachers shall be selected and contracted with by the prudential committees of the several districts, such a town or district may elect three persons as a prudential committee, who shall perform all the duties provided for in the above section. *St.* 1839, *ch.* 137.

10. The prudential committee of a school district, in hiring an instructor for the district school, acts as the agent of the town, and the instructor's remedy for his wages is an action against the town. 11 *Pick.* 260.

11. In any town, which shall so determine, the said prudential committee may be chosen by the inhabitants of the several school districts, to which they respectively belong, in such manner as the district may direct. *R. S. ch.* 23, § 26.

12. The inhabitants of each school district, qualified to vote in town affairs, shall choose a clerk, who shall be sworn to the faithful discharge of the duties of his office, by the moderator, in open meeting, or by any justice of the peace, and who shall make a fair record of all votes, passed at any meeting of the district, and certify the same when required, and who shall hold his office until another shall be chosen and sworn in his stead. *Ib.* § 27.

13. Where the clerk of a school district removed into an adjoining district, but within the same town, and another was chosen in his stead but not sworn, it was held that the first continued competent to act as clerk. 21 *Pick.* 75.

14. The said inhabitants may, at any meeting called for

that purpose, raise money for erecting or repairing school houses in their respective districts; for purchasing or hiring any buildings to be used as school houses, and land for the use and accommodation thereof; for purchasing fuel, furniture, and other necessary articles for the use of schools; they may also determine, in what part of their respective districts such school houses shall stand, and may choose any committee to carry into effect the provisions aforesaid; and they may also, by the prudential committee of the district, select, contract with, and employ, an instructor for each school in the district. *Ib.* *R. S. ch.* 23, § 28.

15. When a school district accepted the proposals of a builder, to erect a school house for a certain sum, with liberty to build a public hall over the same, as the builder's property, he allowing the district to have the use of the hall free of charge for meetings of the district, and for examination of the schools &c., and the house was so built; it was held that the district had not exceeded its authority, and that a tax was legally assessed to pay for the house. 6 *Met.* 498.

16. Each legally constituted school district in this Commonwealth is authorized to raise money for the purpose of establishing and maintaining a common school library and apparatus for the use of the children therein, under such rules and regulations as said district may adopt, *provided*, that no greater sum than thirty dollars the first year, or ten dollars in any subsequent year shall be expended for the purpose aforesaid. *St.* 1837, *ch.* 147, § 1.

17. The clerk of a school district shall be answerable only for want of integrity on his own part; and, if he shall certify truly, to the assessors of the town, the votes of the district, for raising by a tax any sum of money, the district shall be liable, in case of any illegality in the proceedings, which may have been had, in relation to raising such money. *R. S. ch.* 23, § 29.

18. If any school district cannot determine where to place their school house, the selectmen of the town, to which the district belongs, upon application made to them, by the committee appointed to build or procure the school house, or by five or more of the legal voters of the district, shall determine where such school house shall be placed. *Ib.* § 30.

19. In all cases, where a prudential committee shall not be chosen for any school district, the school committee of the town shall perform all the duties of the prudential committee thereof. *Ib.* § 31.

20. The inhabitants of every town may, if they shall think it expedient, carry into effect the provisions of the eighth section, at the common expense of the town, so far as relates to providing school houses for the several school districts of the town; and the town in such case may, at any legal meeting, raise money and adopt all other proper measures for this purpose. *Ib.* § 32.

21. In raising and assessing money in the several school districts, every inhabitant of the district shall be taxed, in the district in which he lives, for all his personal estate, and for all the real estate which he holds in the town, being under his own actual improvement; and all other of his real estate, in the same town, shall be taxed in the district in which it lies. *Ib.* § 33.

22. In the assessment of all taxes, pursuant to the preceding section, all real estate and machinery, belonging to manufacturing corporations, shall be taxed in the school districts where the same are situated; and in assessing the shares in such corporation, for the like purposes, the value of said machinery and real estate shall be first deducted from the value of such shares. *Ib.* § 34.

23. Whenever the real estate of a non-resident owner shall be taxed to such owner, it may be taxed in such district as the assessors of the town shall determine; and the

said assessors, before they assess a tax for any district shall determine in which district the lands of any such non-resident shall be taxed, and certify in writing their determination to the clerk of the town, who shall record the same; and such land, while owned by any person, resident without the limits of the town, shall be taxed in such district accordingly, until the town shall be districted anew. *Ib.* § 35. 6 *Met.* 512, 546.

24. Where the assessors neglected to comply with the above provisions it was held that the assessment was invalid, and that an inhabitant of the district might avail himself of such defect 14 *Pick.* 362.

25. All the lands, within any town, owned by the same person, not living therein, shall be taxed in the same district. *R. S. ch.* 23, § 36.

26. The assessors of the town shall assess, in the same manner as town taxes are assessed, on the polls and estates of the inhabitants of each school district, and on all lands liable to be taxed therein, as aforesaid, all moneys voted to be raised by the inhabitants of such districts, for the purposes aforesaid; and such assessment shall be made within thirty days after the clerk of the district shall certify to said assessors the sum voted by the district to be raised. *Ib.* § 37.

27. In the construction of the statute of 1799, ch. 66, sect. 2, the provision of which on this subject is the same as the above, the court held as follows:—

Moneys voted to be raised by a school district may be assessed by assessors chosen after such vote. 3 *Mass.* 23.

28. It is not necessary that such vote be certified by the district clerk, to the assessors in office at the time the vote passed; but it may be certified to the assessors which shall be chosen afterwards. *Ib.*

29. Nor is it necessary that the assessors make the assessment within thirty days from the date of the certificate

of the district clerk; for, although they are directed so to do by the statute, yet as there are no negative words restraining them from making the assessment afterwards, the naming of the time for the assessment must be considered as directory to the assessors, and not as a limitation of their authority. *Ib.* 21 *Pick.* 75.

30. If the assessors make an illegal assessment, and issue their warrant to collect the money, they may revoke their doings, and make a new assessment and issue a new warrant, without a second certificate from the district clerk; or if their office should expire before making such new assessment, or if they should neglect or have no time to make *any* assessment, the district clerk may make a *second* certificate to their successors, who may make the assessment. 3 *Mass.* 230.

31. A school district, after having voted to raise money for building or repairing a school house, may at a legal meeting at any time before the assessment, rescind their vote; and then the assessors, after regular notice, will have no authority to make the assessment. *Ib.*

32. If a school-district vote that the money, raised by them for the purpose of building or repairing a school house, shall be paid within a certain time, the assessors may, notwithstanding such vote, make the assessment after the expiration of the time of payment expressed in the vote; for the power of fixing the time of payment is not given to the district, but to the assessors, who are to limit it in their warrant. 3 *Mass.* 230.

33. It is not necessary to notify the inhabitants to bring in lists of their polls and estates, nor for the assessors to make a new valuation, but the taxes may be made in reference to the town taxes for the same year. 5 *Pick.* 323.

34. The town officers are bound by the certificate of the district clerk, that the money was duly voted; and

they are not to inquire into the regularity of the proceedings of the district. 14 *Mass.* 315. 5 *Pick.* 323.

35. If after a tax has been assessed, part of the district should be set off to another district, the inhabitants of that part will still be held liable, to pay the tax, the debt being fixed by the assessment. 5 *Pick.* 323.

36. A tax assessed upon the inhabitants of a school district is not rendered void by the omission of the assessors, through misinformation, mistake of fact, or error of judgment, to assign the real estate of one or more non-resident owners to any school district. 6 *Met.* 498.

37. All property belonging to common school districts, the income of which is appropriated to the purposes of education, is exempted from taxation. *St.* 1843, *ch.* 85.

38. The said assessors shall make a warrant, substantially in the form heretofore used, except that a seal shall not be required thereto, directed to one of the collectors of the town, to which such district belongs, requiring him to collect the tax so assessed, and to pay the same to the treasurer of the town, within a time to be limited in the warrant; and a certificate of the assessment shall be made by the assessors, and delivered to the said treasurer. *R. S. ch.* 23, § 38.

39. The money so collected and paid shall be at the disposal of the committee appointed by the district, to be by them applied to the building or repairing of school houses, or to the purchase of buildings, to be used as school houses, or to the purchase of land, for the sites of school houses, as before provided, and according to the votes or directions of the inhabitants of the district. *Ib.* § 39.

40. Every collector, in collecting such tax, shall have the same powers, and proceed in the same manner, as is by law provided in collecting town taxes. *Ib.* § 40.

41. The treasurer of any town, to whom a certificate of

the assessment of a district tax shall be transmitted as aforesaid, shall have the like authority, to enforce the collection and payment of the money, so assessed and certified, as in the case of moneys raised by the town, for the use of the town. *Ib.* § 41.

42. The assessors, treasurer and collector shall have the same compensation, respectively, for assessing, collecting and paying out all moneys, assessed for the use of a school district, as is allowed by the town, for the like services in respect to town taxes. *Ib.* § 42.

43. The assessors of the several towns shall have the same power to abate the tax, or any part thereof, assessed on any inhabitant of a school district, as they have to abate any town taxes. *Ib.* § 43.

44. Whenever a meeting of the inhabitants of any school district shall be called, for the purpose of raising money, and a majority of the voters present shall be opposed to the raising of the money, any five inhabitants of such school district, who pay taxes, may make application in writing to the selectmen of the town, in which the school district is situated, requesting them to insert, in their warrant for the next town meeting, an article, requiring the opinion of the town, relative to the expediency of raising such moneys as were proposed in the wrrrant for said district meeting; and if the majority of the voters, present in such town meeting, shall think the raising of any of the sums of money, proposed in said warrant, to be necessary and expedient, they may vote such sum as they shall think necessary for the said purposes, and the same shall be assessed on the polls and estates of the inhabitants of such district, and be collected and paid over in the manner before provided. *Ib.* § 44.

They may also empower the selectmen of the town, or the school committee, or may choose any committee to carry into effect the vote if the inhabitants of the school

district shall neglect or refuse to choose such committee. *St.* of 1848, *c.* 274.

55. If any school district shall neglect or refuse to establish a school and employ a teacher for the same, the school committee of the town may establish such school and employ a teacher therefor, as the prudential committee might have done. *R. S. c.* 23, § 45.

46. The selectmen of the several towns, divided into school districts as aforesaid, and the prudential committee of every such district, upon application made to them, respectively, in writing, by three or more residents in any district, who pay taxes, shall issue their warrant, directed to one of the persons making such application, requiring him to warn the inhabitants of such district, qualified to vote in town affairs, to meet at such time and place in the same district, as shall be expressed in the warrant. *Ib.* § 46.

47. The warning aforesaid shall be given seven days at least before the time appointed for the meeting, and shall be either by personal notice to every inhabitant of the district, qualified to vote in town affairs, or by leaving, at his last and usual place of abode, a written notification, expressing therein the time, place, and purpose of the meeting, unless the district shall prescribe another mode of warning their meetings. *Ib.* § 47.

48. Every school district may, at any regular meeting, having an article in the warrant for that purpose, prescribe the mode of warning all future meetings of the district; and they may also direct by whom and in what manner such meetings shall be called. *Ib.* § 48.

V. UNION SCHOOL DISTRICTS.

1. Purpose and manner of forming union districts.
2. Corporate powers of such districts.
3. Manner of calling and warning meetings.
4. Clerk to be chosen and sworn; his duties, and tenure of office.

5. Power of districts as to raising money to build, &c. school houses, &c. Provision as to location of houses, and choice of committee.
6. Who shall be prudential committee of such districts: their powers.
7. Such committee to determine ages, &c. of pupils, and the proportion of money to be expended subject to vote of district.
8. Town committee's power, &c. to extend to union districts.

1. Any two or more contiguous school districts may associate together and form a union district, for the purpose of maintaining a union school, to be kept for the benefit of the older children of such associated districts, if the inhabitants of each of said districts shall, at legal meetings called for that purpose, agree to form such union by a vote of two thirds of the legal voters of each district present and voting therein. *St.* 1839, *ch.* 56, § 2.

2. Every union district thus formed shall be a body corporate, with the corporate powers of other school districts, in relation to prosecuting and defending suits at law, and holding real and personal property, and shall be called by such name as said district at its first meeting shall determine. *St.* 1838, *ch.* 189, § 2.

3. The first meeting of such union district shall be called in such manner, and at such time and place, as may be agreed upon by the associated districts respectively, by a vote of the same, at the time of forming the union; and the union district may, from time to time thereafter, prescribe the mode of calling and warning the meetings thereof, in like manner as other school districts may do, and may also determine at what time its annual meetings shall be held. *Ib.* § 3.

4. Such union district, at the first meeting thereof, shall choose, by ballot, a clerk, who shall be sworn in the same manner and shall perform the same duties as are prescribed in relation to the clerks of other school districts, and shall hold his office until another shall be chosen in his stead. *Ib.* § 4.

5. Such union district may, at any legal meeting called

for that purpose, raise money for erecting, purchasing, renting and repairing any building to be used as a school house for the union school aforesaid, and purchasing or renting land for the use and accommodation thereof; also, for purchasing fuel, furniture, and other necessary articles for the use of said school, and in assessing and collecting a tax or taxes for the above purposes, the like proceedings shall be had as are prescribed by law for other school districts; said district may also determine where said school house shall stand, and in case the location thereof should not be so determined by said district, the same shall be referred to the selectmen of the town, in the same manner as is provided in the case of other districts; said district may choose any committee to carry into effect the provisions aforesaid. *Ib.* § 5.

6. The prudential committees of the respective districts, forming the union district, shall, together, constitute the prudential committee of said district, who shall have all the powers, and discharge all the duties, in relation to said school and the school house of said district, as are prescribed to other prudential committees in relation to the schools and school houses in their respective districts. *Ib.* § 6.

7. The prudential committee of the union district shall also determine the ages and qualifications of the children of the associated districts, who may attend the union school, and shall also determine what proportion of the money, raised and appropriated by the town for each of the districts composing the union district, shall be appropriated and expended in paying the instructor or instructors of the union school; subject, however, in both the above cases, and in all other matters relating to said school, to any votes of said union district that may be passed at any legal meeting thereof; *provided, however*, that the schools in each of the associated districts shall continue to be maintained in

the same manner as if this act had not been passed. *Ib.* § 7.

8 The school committee of the town in which such union district may be located, shall have the same powers, and perform the same duties, in relation to such union school, as are prescribed to them in relation to other district schools. *Ib.* § 8.

VI. HIGH SCHOOL DISTRICTS.

1. Adjacent towns may unite to form a high school district.
2. School committees from such towns to elect one from each board to form the committee for such school.
3. Such committee to determine the location of the school-house, &c.
4. Towns to be assessed for expenses according to their proportion of the county tax.

1. Any two adjacent towns, not having more than two thousand inhabitants each, may form one high school district for establishing such a school as is contemplated in the fifth section of the twenty-third chapter of the revised statutes, whenever a majority of the citizens of each town, in meetings called for that purpose shall so determine. *St. of* 1848, *ch.* 279, § 1.

2. The school committees of the two towns so united, shall elect one from each of their respective boards, and the two so elected shall form the committee for the management and control of such school, with all the powers conferred upon school committees and prudential committees. *Ib.* § 2.

3. The committee provided for in the foregoing section, shall determine the location of such school house as shall be authorized to be built by the towns forming such district, or authorize the location of such school alternately in the two towns, whenever the towns shall not determine to erect a house for its permanent location. *Ib.* § 3.

4. In the erection of any schoolhouse, for the permanent

location of such school, and in the support and maintenance of the same, and in all incidental expenses attending the same, the proportions to be paid by each town, unless otherwise agreed upon, shall be according to the proportions of such towns in the county tax. *Ib.* § 4.

VII. CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

1. Contiguous districts of adjoining towns, may unite themselves into one.
2. No such union to be formed without consent of the districts and towns.
3. United districts may again be separated.
4. First and other meetings of united districts, how called.
5. Prudential committee to be chosen.
6. Moneys raised, to be in proportion, &c.,
7. Moneys to be assessed by assessors of respective towns.
8. School committees of adjoining towns, to officiate alternately, &c.

1 Where two or more contiguous school districts, in adjoining towns, are too small to maintain schools advantageously in each, such districts may, if they see fit, unite and form one district, with all the powers and privileges, and subject to all the liabilities, which now are, or hereafter may be, allowed or prescribed in regard to school districts. *R. S. ch.* 23, § 49.

2. No districts shall be so united, unless the inhabitants of each shall, at legal meetings called for the purpose, agree thereto; nor unless the respective towns shall, at legal town meetings called for the purpose, assent to the same; and when any such vote shall be passed by any school district, the clerk thereof shall forthwith send a certified copy of said vote to the clerk of his town. *Ib.* § 50.

3. Whenever the voters in such united district shall, at any legal meeting called for the purpose, deem it expedient to separate, and again form two or more districts, they may so do, first obtaining the consent of the respective towns. *Ib.* § 51.

4. The first meeting of such united district shall be called in such manner as may be agreed upon by the respective districts, at the time of forming the union; and the united district may, from time to time thereafter, prescribe the mode of calling and warning the meetings, in like manner as other school districts may do. *Ib.* § 52.

5. Such district, at the first meeting, and annually thereafter, shall choose a prudential committee, who shall receive and expend the money, raised and appropriated in each town, for said united district, and shall possess all the powers and discharge all the duties, allowed or prescribed to the prudential committees of other districts. *Ib.* § 53.

6. The inhabitants of every such united district shall, at the time of voting to raise such moneys, determine the amount to be paid by the inhabitants in each town, which shall be in proportion to their respective polls and estates; and the clerk of the district shall certify such vote to the assessors of each of the said towns. *Ib.* § 54.

7. All moneys, duly voted to be raised by any such united district, shall be assessed, by the assessors of the respective towns, upon the polls and estates of the inhabitants of the district, and collected in the same manner, that taxes are assessed and collected in other school districts. *Ib.* § 55.

8. The respective school committees of the towns, from which such united district is formed, shall discharge the duties of school committees for the district, in alternate years, commencing with the most ancient towns. *Ib.* § 56.

VIII. SCHOOL RETURNS AND DISTRIBUTION OF SCHOOL FUND.

1. School Committee to make report.
2. To make returns to the secretary of state.
3. Form of blanks, &c, to be prescribed by Board of Education.
4. School Committee to ascertain, yearly, the number of persons

between 4 and 16 years of age, and the sum raised to support schools; to certify to the secretary of the Commonwealth; form of certificate.
5. Secretary and treasurer to apportion income of school fund among towns, that return certificate, according, &c.
6. Income of committee may be withheld in case of forfeiture of income of school fund through their neglect.

1. The school committees shall annually make a detailed report of the condition of the several public schools in their respective cities and towns, which report shall contain such statements and suggestions in relation to such schools as the said committees shall deem necessary or proper to promote the interests thereof; and a certified copy of such report shall be transmitted by said committees to the office of the secretary of the Commonwealth, on or before the last day of April. Said report shall also be deposited in the office of the clerk of the city or town, and shall either be read in open town meeting, in the month of February, March or April, or, at the discretion of the school committee, shall be printed for the use of the inhabitants. *Stat.* 1838, *ch.* 105, § 1. *Stat. of* 1846, *ch.* 233, § 4.

2. The school committees of the several towns and of the city of Boston shall, on or before the first day of November, in each year, make official returns, to the secretary of the Commonwealth, of all the public schools in such towns and city, respectively, whether such schools are kept for school districts, or for the common benefit of all the inhabitants. *R. S. ch.* 23, § 65.

3. The form of the blanks, and the inquiries to be answered shall be prescribed by the Board of Education; and the school committees shall fill the blanks and answer the inquiries contained in such form. *R. S. ch.* 23, § 62. *St.* 1838, *ch.* 105, § 5. *St.* 1841, *ch.* 17, § 4.

4. The school committee of each city and town shall in each year, as soon as may be ascertained, after the first of May, by actual examination or otherwise, the number of persons between the ages of four and sixteen years, be-

longing to such city or town on the first day of May, and shall make a certificate thereof, under oath, and also of the sum raised by the city or town for the support of schools, including only wages and board of teachers, and fuel for the schools during said year, and shall transmit the same to the secretary of the Commonwealth, on or before the last day of the following April; which certificate shall be in the following form to wit: We the school committee of ———, do certify, from the best information we have been able to obtain, that on the first day of May, in the year ———, there were belonging to said town the number of ——— persons, between the ages of four and sixteen years; and we further certify that said town raised the sum of ——— dollars for the support of common schools for the said year, including only the wages and board of teachers and fuel for the schools.

——— ———, }
——— ———, } *School Committee.*

——— *ss.* On this ——— day of ——— personally appeared the above named school committee of ———, and made oath that the above certificate by them subscribed is true. Before me, ——— ———, *Justice of the Peace.* *St.* 1841, *ch.* 17, § 1. *St. of* 1846, *ch.* 23, § 2.

5. The income of the Massachusetts School Fund to the first day of June in each year, except the sum of two hundred and forty dollars, appropriated to the support of schools among the Indians, shall be apportioned by the secretary and treasurer, and paid over by the treasurer, on the tenth day of July, to the treasurers of the several cities and towns, for the use of the common schools therein, according to the number of persons therein between the ages of four and sixteen years, ascertained and certified as in the preceding section; *provided, however*, that no such apportionment shall be made to any city or town which

shall have failed to comply with any of the provisions of St. of 1846, c. 223, given under this title, or which shall not have raised by taxation, for the support of schools, including only the wages and board of teachers, and fuel for the schools, during the said year, a sum equal at least to one dollar and twenty-five cents, for each person between the ages of four and sixteen years, belonging to said city or town, on the first day of May of said year. *Stat. of* 1846, *ch.* 223, § 5.

6. Any city or town may withhold such compensation as the school committee of such city or town, are by law authorized to receive, if such town or city shall have forfeited its own portion of the income of the school fund, through the failure of such committee to comply with the provisions of the fourth section of this title. *St. of* 1848, *ch.* 173.

IX. GENERAL PROVISIONS.

1. Duties of instructors in colleges, &c.
2. Duty of ministers and town officers.
3. Forfeiture, if towns neglect to raise money for schools; and how appropriated.
4. School committee, &c., to receive and appropriate sums forfeited.
5. Provisions not to affect funds, &c. of corporations for supporting schools.
6. Land may be taken for school houses, when, &c.
7. Owner of land may have jury to revise proceedings.

1. It shall be the duty of the president, professors, and tutors of the University at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and all other instructors of youth, to exert their best endeavors, to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance,

and those other virtues, which are the ornament of human society, and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices. *R. S. ch.* 23, § 7.

2. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, in the several towns, to exert their influence, and use their best endeavors, that the youth of their towns shall regularly attend the schools established for their instruction. *Ib.* § 8.

3. If any towns shall refuse or neglect to raise money for the support of schools, as required by *R. S. ch.* 23, such town shall forfeit a sum, equal to twice the highest sum, which had ever before been voted for the support of schools therein; and, if any town shall refuse or neglect to choose a school committee to superintend said schools, or to choose, for the purposes mentioned in said chapter, prudential committees in their several districts, when it is the duty of the town to choose such prudential committee, such town shall forfeit a sum not less than one hundred dollars, which shall be paid into the treasury of the county; and one fourth thereof shall be for the use of the county, and three fourths thereof shall be paid by the county treasurer to the school committee of such town, if any, and if not, to the selectmen of the town, for the support of schools therein. *Ib.* § 60.

4. Every such school committee, or board of selectmen, shall forthwith receive, from the treasurer of the county, any money so payable to them, and shall apportion and

appropriate the same, to the support of the schools of such town, in the same manner it should have been appropriated, if it had been regularly raised by the town for that purpose. *Ib.* § 61.

5. Nothing contained in *R. S. ch.* 23, shall affect the right of any corporation, which is or may be established in any town, to manage any estate or funds, given or obtained for the purpose of supporting schools therein, or, in any wise, to affect any such estate or funds; but such corporate powers and such estate and funds shall remain, as if these provisions had not been enacted. *Ib.* § 59.

6. Whenever a suitable place shall have been designated by any town or school district, for the erection of a school house and necessary buildings, agreeably to the provisions of the title "School Districts," and the owner of the land shall refuse to sell the same, or shall demand therefor a price which, in the opinion of the selectmen, is unreasonable, the said selectmen, with the approbation of the town, may proceed to select at their discretion a school house lot, and lay out the same, not exceeding in quantity forty square rods, and to appraise the damages to the owner of such land, in the same way and manner as is provided for laying out townways and appraising damages sustained thereby; and, upon payment, or tender of payment, of the amount of such damages, by the town or district designating such school house lot, to the owner thereof, the said land shall be taken, held, and used, for the purpose for which it is designated. *St. of* 1848, *c.* 237, § 1.

7. Whenever the owner of such land shall feel aggrieved by the selection and location of such lot, and the damages awarded, he shall be entitled to have the matter of complaint tried by a jury, which may be applied for within one year after the location of such lot, and shall be ordered accordingly by the county commissioners; and the jury shall have the power to change the location, and assess the

damages, and the proceedings shall, in all respects, be conducted in the same manner as is provided in cases of damages by laying out highways; and if the damages shall be increased, or the location be changed, by the jury, the damages and all charges shall be paid by the town or district for whose benefit the lot is selected, otherwise the charges, which may arise on such application, shall be paid by such applicant. And the land so taken shall be held and used for no other purpose than that contemplated in this act, and shall revert to the owner, his heirs or assigns, upon the discontinuance thereon, for one year, of such school as is now, or may hereafter be, required of the town or district by law. *Ib.* § 2.

SELECTMEN.

1. How chosen and qualified.
2. To be assessors of taxes if others are not chosen, and to take assessor's oath.
3. To be overseers of the poor if others are not chosen.
4. To be the board of health if others are not chosen.
5. Penalty for acting before taking the oath of office.

1. The Selectmen are to be chosen at the annual meeting, by written ballots, and to be sworn to the faithful discharge of the duties of their office. *See ante pp.* 22 *&* 23.

2. Selectmen are to be assessors of taxes when other persons are not specially chosen to that office, and shall take the assessors' oath. *R. S. ch.* 15, §§ 52 *&* 53.

3. Selectmen are to be overseers of the poor when other persons are not chosen to the office. *Ib.* § 52.

4. In case a town shall not choose any board of health or health officer, the selectmen shall be the board of health. *R. S. ch.* 21, § 1.

5. Every person, elected to the office of selectmen of any town, who shall enter upon the performance of the

duties of his office before taking the oath of office, shall forfeit to the use of his town, a sum not exceeding one hundred dollars for each offence. *R. S. ch.* 15, § 54.

I. DUTIES OF SELECTMEN AS TO JURORS.

1 Qualifications of jurors.
2. Persons exempted from serving.
3. Members of the fire department.
4. Selectmen to prepare lists of persons qualified.
5. Lists, subject to approval and alteration by the town.
6. Names to be put into a box.
7. Name of a person convicted, &c. to be withdrawn.
8. Jurors to be selected by drawing their names.
9. Names, when and how to be drawn.
10. When grand jurors are drawn at the same time with jurors for trials.
11. May be drawn in town meeting.
12. Date of each draft to be indorsed on the ballot.
13. No person liable to serve more than once in three years.
14. Clerks to issue writs of venire facias
15. Jurors to be equally apportioned.
16. Venires, how distributed and served.
17. Jurors, at what time to be drawn.
18. Jurors to be summoned and venire returned by constable.
19. Additional venires may be issued in term time.
20. Fines on jurors neglecting to attend.
21. Special provisions for Nantucket and Dukes county.
22. Fines on officers and others for neglect.
23. Same in cases of highways, mills, &c.
24. Punishment for fraud in drawing jurors.
25. Jury for alteration of highways or estimation of damages occasioned by laying out the same.
26. Penalty for non-attendance.
27. Jury to assess damages for flowing lands and laying out turnpikes and rail roads.
28. Jury on commitments to State Lunatic Hospital
29. Jury on discharge of incurable lunatics, &c.
30. Jury on commitment of lunatics not furiously mad.
31. Fees of Jurors.

1. All persons who are qualified to vote in the choice of representatives in the general court, shall be liable to be drawn as jurors, except as is hereinafter provided. *R. S. ch.* 95, § 1.

2. The following persons shall be exempted from serving as jurors, to wit:

The governor, lieutenant governor, members of the council, secretary and treasurer of the Commonwealth, all

judges and justices of any court, except justices of the peace, all county and special commissioners, clerks of courts, registers of probate, and registers of deeds, sheriffs and their deputies, coroners, constables, and criers of the courts, marshals of the United States and their deputies, and all other officers of the United States, counsellors and attorneys at law, settled ministers of the gospel, officers of colleges, and preceptors and teachers of incorporated academies, practising physicians and surgeons regularly licensed, cashiers of incorporated banks, and constant ferrymen, and all persons who are more than sixty-five years old. *Ib.* § 2.

No member of the Senate or of the House of Representatives, or the officers of either of those branches, shall during the session of the general court, be required to perform the duty of a juror. *St.* 1838, *ch.* 21.

3. All members of the fire department, in the city of Boston, shall be exempted from serving as jurors; and all engine men and members of the fire departments, in other towns, may be exempted by their respective towns, by vote at any legal town meeting. *R. S. ch.* 95, § 3.

4. The selectmen of each town shall, once at least in every three years, prepare a list of such inhabitants of the town, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions, which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census. *Ib.* § 4.

5. The list, when so prepared, shall be laid before the town, and the town may alter it, by adding thereto the names of any persons liable to serve, or by striking any names therefrom. *Ib.* § 5.

6. The selectmen shall cause all the names, borne on

the said list, to be written, each on a separate paper or ballot, and shall roll up or fold the ballots, so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box, to be kept by the town clerk for that purpose. *Ib.* § 6.

7. If any person, whose name is so placed in the jury box, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box by the selectmen, and he shall not be returned to serve as a juror. *Ib.* § 7.

8. All jurors, whether required to serve on a grand jury, or a traverse jury, or by force of the laws relating to highways or mills, or any other occasion, except a coroner's inquest, shall be selected by drawing ballots from the said box, and the persons, whose names are borne on the ballots, so drawn, shall be returned to serve as jurors. *Ib.* § 8.

9. When any jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office, or at some other public place appointed for that purpose, and if the town clerk is absent, the selectmen may proceed without him; and the ballots in the jury box shall be shaken and mixed together, and one of the selectmen shall openly draw therefrom as many ballots, without seeing the names written thereon, as shall be equal to the number of jurors required; and if any person so drawn is exempted by law, or is unable, by reason of sickness, or absence from home, to attend as a juror, or if he shall have served as a juror in any court, within three years then next preceding, his name shall be returned into the box, and another shall be drawn in his stead. *Ib.* § 9.

10. Whenever grand jurors shall be drawn at the same time with jurors for trials, the persons, whose names are first drawn, to the number of grand jurors required, shall

be returned as grand jurors, and those afterwards drawn shall be the jurors for trials. *R. S. ch.* 136, § 3.

11. Any town may, at a legal meeting, order that all drafts for jurors in such town shall be made in open town meeting, in which case, the draft shall be made by the selectmen, in the manner prescribed in the preceding section, except that it shall be done in a town meeting, to be notified and warned, in such manner as shall be ordered by the town, or otherwise prescribed by law. *R. S. ch.* 95, § 10.

12. When any person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft, and shall then return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts, made within three years then next preceding. *Ib.* § 11.

13. No person shall be liable to serve as a juror in any court oftener than once in three years, but he shall not be exempted by reason of having been drawn, unless he shall actually attend and serve as a juror, in pursuance of the draft. *Ib.* § 12.

14. The clerks of the several courts shall, in due season before every term, or at such other times as the respective courts shall order, issue writs of venire facias for jurors, and shall therein require the attendance of the jurors, on such day of the term as the court shall order. *Ib.* § 13.

15. The clerks, in issuing the venires, shall have regard to the number of inhabitants in the several towns, and shall require from each town a number of jurors, as nearly as may be in proportion to their respective numbers, so as to equalize as far as possible the duty of serving as jurors. *Ib.* § 14.

16. The venires shall be delivered to the sheriff of each county, and by him transmitted to a constable in each of

the towns to which they are respectively issued, and they shall be served by the constable without delay on the selectmen and town clerk ; and if the town shall have ordered that jurors shall be drawn in open town meeting, the selectmen shall cause a town meeting to be warned for that purpose. *Ib.* § 15.

17. The meeting for drawing jurors, whether the draft be made in town meeting, or before the selectmen and town clerk only, shall be held not less than seven days and not more than twenty-one days, before the day when the jurors are required to attend. *Ib.* § 16.

18. The constable shall four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the venire, with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn, and also of the time and place of the sitting of the court, at which he is to attend, and shall make a return of the venire, with his doings thereon, to the clerk, before the opening of the court from which it was issued. *Ib.* § 17.

19. Nothing contained in the preceding sections shall prevent any court from issuing venires in term time, for additional jurors, whenever it shall be found necessary, for the convenient despatch of their business ; in which case, the venires shall be served and returned, and the jurors shall be required to attend, on such days as the court shall direct. *Ib.* § 18.

20. If any person, duly drawn and summoned to attend as a juror in any court, shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court, to which the juror was summoned, and shall be paid into the county treasury. *Ib.* § 19.

21. The inhabitants of the counties of Nantucket and

Duke's county shall be liable to be drawn and to serve as jurors, once in every two years; and the lists of persons, liable to serve as jurors in the several towns in Duke's county, may include one for every thirty of the inhabitants thereof respectively. *Ib.* § 38.

22. When by a neglect of any of the duties required in this chapter, to be performed by any of the officers, or persons herein mentioned, the jurors, to be returned from any place, shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court, to the use of the county in which the offence is committed. *Ib.* § 39.

23. If such neglect shall occur with regard to any jurors who may be required to serve on any other occasion than as jurors in the supreme judicial court, the court of common pleas, or the municipal court, the sheriff or other officer, before whom the jurors were required to appear, shall make known the fact to the court of common pleas, then next to be held in the same county, and the court, after due examination and a hearing of the parties who are charged, shall impose the fine. *Ib.* § 40.

24. If any town clerk, selectman, mayor, alderman, or clerk of the city of Boston, shall be guilty of any fraud, either by practising on the jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, to be paid to the use of the county in which the offence is committed. *Ib.* § 41.

25. The twenty-fourth chapter of the revised statutes provides that any party aggrieved by the doings of the commissioners either in laying out, altering or discontinu-

ing any highway, or in the estimation of his damages occasioned thereby, may have a jury to determine the matter of his complaint. The officer who receives the warrant for a jury shall, in writing, require of the selectmen of the three nearest towns not interested in the question, (if there be so many in the county,) to return a number of jurors, not less than two, nor more than six, from any one town, unless in case of necessity; and the jurors shall be drawn, summoned and returned, as in other cases, excepting that the jurors need not be summoned more than twenty-four hours before the time appointed for their attendance. *R. S. ch.* 24, §§ 13 & 19.

26. If any person so summoned as a juror shall fail to attend, without sufficient cause, he shall pay a fine not exceeding ten dollars, at the discretion of the court, to which the verdict shall be returned, to be paid into the county treasury. *Ib.* § 20.

27. Jurors for assessing damages for flowing lands, and laying out turnpike and rail roads, are to be drawn, summoned and returned, in the same manner as jurors, for assessing damages in laying out highways, and jurors are required to attend under the same penalty. *R. S. ch.* 116, § 13.

28. The Judges authorized by the forty-eighth chapter of the revised statutes, and the statutes of 1839, *ch.* 149, to commit lunatics to the State lunatic hospital whenever request for that purpose shall be made by the person complained against, shall issue a warrant to the sheriff or any deputy of the sheriff, in their respective counties, directing the sheriff or deputy to summon a jury of six lawful men, to hear and determine the question whether the person complained against is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that such person should be at large.

The Jurors shall be selected in equal numbers from the

town in which the trial shall be had, and one adjoining town, or from two adjoining towns, as the judges aforesaid respectively shall direct, and the same proceedings shall be had in selecting and impannelling said jury, as in cases of juries summoned to determine complaints as to highways; *provided*, that in the counties of Suffolk and Nantucket all the jurors may be taken from the same town. *St. of* 1837, *ch.* 228, § 112. *See also* § 25 *of this title and* § 1 *of title* "*Lunatic Paupers.*"

29. On a petition for the discharge of a lunatic from the state hospital as incurable, or his recommitment under the provisions stated in the seventh and eighth sections of the title "Lunatic Paupers," any person interested in the questions of discharge or recommitment, may have a jury of six lawful men to determine the same, selected and summoned as is required in the preceding section. *St. of* 1839, *ch.* 149, § 1 & 2.

30. Upon an application to two justices of the peace, one of whom shall be of the quorum, for the confinement of a lunatic not furiously mad, the person complained against may have a jury of six lawful men, to determine the question of his insanity selected in the manner stated in section 28. *St. of* 1836, *ch.* 223. *St. of* 1838, *ch.* 73, § 1 & 2. *See also* § 12 *of title* "*Lunatic Paupers.*"

31. The fees of jurors are as follows: to each person attending as a grand juror or traverse juror, in any court, one dollar and seventy-five cents a day for his attendance, and eight cents a mile for his travel out and home; and to each person attending as a juror, before a sheriff or coroner, or on any other occasion prescribed by law, one dollar and twenty-five cents a day for his attendance, and six cents a mile for his travel out and home. *R. S. ch.* 122, § 10.

II. DUTIES OF SELECTMEN AS TO SPENDTHRIFTS AND INSANE PERSONS.

1. Construction of the words, "insane person," and "spendthrift."
2. Guardian of spendthrift, how appointed.
3. Object of the appointment of guardian.
4. Fourteen days notice to be given to spenthrift.
5. Contracts of the spendthrift pending the proceedings taken void.
6. Power and duty of the guardian of a spendthrift.
7. Guardian of an insane person, how appointed.
8. Power and duty of such guardian.
9. Expenses of the insane person or spendthrift in opposing.
10. Assessors to act instead of selectmen in certain cases
11. Commitment of lunatic paupers to hospital.

1. The words "insane person," are intended to include every idiot, non compos, lunatic and distracted person, and the word "spendthrift," is intended to include every one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards. *R. S. ch.* 79, § 34.

2. When any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his estate, as to expose himself or his family to want or suffering, or to expose the town to charge or expense, for the support of himself or his family, the selectmen of the town of which such person is an inhabitant, or in which he may reside, or upon which he is or may become chargeable, may present a complaint to the judge of probate, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him. *Ib.* § 11. *Stat. of* 1846, *ch.* 240.

3. Where the selectmen, having filed a complaint for the appointment of a guardian, relinquished the proceedings in consideration of a bond and mortgage given them by the spendthrift with condition to indemnify the town from expense on account of himself and his family, it was held that the bond and mortgage were void; for the object of the appointment of guardian to a spendthrift, is to restrain

him from a course of vicious excesses by taking from him the means of indulging in them, and thus to save both himself and family, from distress and ruin, as well as to save the town from the expense of their support. 12 *Pick.* 152.

4. The judge of probate shall cause notice to be given to such supposed spendthrift, of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the judge that the person complained of comes within the description contained in the second section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified. *R. S. ch.* 79, § 12.

5. After the order of notice has been issued, the complainants may cause a copy of the complaint, with the order of notice, to be filed in the registry of deeds for the county; and if a guardian shall be appointed upon such application, all contracts excepting for necessaries, and all gifts, sales, or transfers of real or personal estate, made by such spendthrift, after such filing of the complaint in the registry of deeds, and before the termination of the guardianship, shall be null and void. *Ib.* § 13.

6. A guardian to a spendthrift, is to have the management of all his ward's estate, and the care and custody of his person. *Ib.* § 13.

7. When the relations or friends of any insane person, or the selectmen of the town, of which such person is an inhabitant, or in which he resides, shall apply to the judge of probate to have a guardian appointed for him, the judge shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the judge that the person in question is incapable of taking care of

himself, the judge shall appoint a guardian of his person and estate. *Ib.* § 9.

8. The powers of the guardian of an insane person are the same as those of the guardian of a spendthrift. *Ib.* § 10.

9. When a guardian shall be appointed for an insane person, or a spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint. *Ib.* § 14.

10. When any insane person, or any person liable to be put under guardianship, as a spendthrift, shall reside on lands not included within any incorporated town or city, all the acts authorized or required to be done, respecting the guardianship of such person, by the selectmen, shall and may be done by the assessors of the district or tract of land, on which such person resides, if there be any such assessors, and if not, by the selectmen of the oldest adjoining town in the same county. *Ib.* § 15.

11. When an application is made for the commitment of a lunatic to the state hospital under the provisions of chapter forty-eighth of the revised statutes, notice in writing of the intention to make such application must be given to one or more of the selectmen of the town where such lunatic resides. *R. S. ch.* 48, § 7.

III. DUTIES OF SELECTMEN UNDER THE LAWS LICENSING INNHOLDERS AND RETAILERS.

1. The selectmen, &c., shall forbid innholders, &c., selling to spendthrifts.
2. Such prohibitions, to be renewed, if no reform effected—Penalty for transgressing such prohibition.
3. Same subject.
4. Innholders' and retailers' licenses may be granted by commissioners.
5. License may be granted to an innholder to keep an inn without authority to sell intoxicating liquors.

6. Commissioners not required to grant licenses when, &c.
7. Licenses to sell wine, &c., may be granted without fee.
8. Clerks of commissioners to transmit lists of licensed persons to selectmen.
9. Persons applying shall produce a certificate of selectmen.
10. Applications for license may be made by any party orally, &c.
11. Provisions, in case selectmen refuse certificate.

1. When any person shall, by excessive drinking of spirituous liquors, so misspend, waste or lessen his estate, as thereby either to expose himself or his family to want or indigent circumstances, or the town to which he belongs to expense, for the maintenance of him or his family, or shall so habitually indulge himself in the use of spirituous liquors, as thereby greatly to injure his health or endanger the loss thereof, the selectmen of the town, in which such spendthrift lives, shall, in writing under their hands, forbid all licensed innholders, common victuallers and retailers of the same town, to sell to him any spirituous or strong liquors aforesaid, for the space of one year; and they may in like manner, forbid the selling of any such liquors to the said spendthrift, by the said licensed persons of any other town to which the spendthrift may resort for the same. *R. S. ch.* 48, § 14.

2. The said selectmen, shall, in the same manner, from year to year, renew such prohibition, as to all such persons as have not in their opinion reformed within the year; and if any innholder, common victualler, or retailer shall, during any such prohibition, sell to any prohibited person, any such spirituous liquor, he shall forfeit for each offence twenty dollars. *Ib.* § 15.

3. When the selectmen, in execution of the foregoing provisions, shall have prohibited the sale of spirituous liquors to any such spendthrift, if any person shall, with a knowledge of said prohibition, give, sell, purchase, or procure for and in behalf of such prohibited person, or for his use, any such spirituous liquors, he shall forfeit for each offence twenty dollars. *Ib.* § 16.

4. The commissioners in the several counties may license, for the towns in their respective counties, as many persons to be innholders, or retailers therein, as they shall think the public good may require. *Ib.* § 17.

5. Any license to an innholder may be so framed as to authorize the licensed person to keep an inn, without authority to sell any intoxicating liquor, and no excise or fee shall be required for such license. *St.* 1837, *ch.* 242, § 2.

6. The county commissioners are not required to grant any licenses when, in their opinion, the public good does not require them to be granted. *Ib.*

7. Any license to an innholder, or retailer, may be so framed as to authorize the licensed person to sell wine, beer, ale, cider, or any other fermented liquor, and not to authorize him to sell brandy, rum, or any other spirituous liquor; and no excise or fee shall be required for such a license. *R. S. ch.* 47, § 21.

8. The clerk of the commissioners in the several counties shall seasonably, before the time for granting licenses in each year, transmit to the selectmen of every town within the county, a list of the persons in such town, who were licensed as innholders or retailers the preceding year. *Ib.* § 22.

9. No license shall be granted or renewed to any person unless he shall produce a certificate from the selectmen of the town, for which he applies to be licensed, in substance as follows, to wit: We, the subscribers, a majority of the selectmen of the town of————, do hereby certify, that ———— has applied to us to be recommended as (here expressing the employment, and a particular description of the place for which the license is applied for,) in the said town, and that, after mature consideration had thereon, at a meeting held for that purpose, at which we were each of us present, we are of opinion, that the public good requires that the petition of said———— be granted, he being, to

the best of our knowledge and belief, a person of good moral character. *Ib.* § 23.

10. Any person, producing such certificate of the selectmen, shall be heard, and his application decided upon, either on a motion made orally by himself or his counsel, or upon a petition in writing, as he shall elect. *Ib.* § 24.

11. If the selectmen of any town shall unreasonably neglect or refuse to make and deliver such a certificate, either for the original granting or the renewal of a license, the person aggrieved thereby may apply for a license to the commissioners, first giving twenty four hours notice to a majority of the said selectmen of his intended application, so that they may appear, if they see fit, to object thereto; and if, on such application, it shall appear that the said selectmen did unreasonably neglect or refuse to give the said certificate, and that the public good requires that the license should be granted, the commissioners may grant the same. *Ib.* § 25.

IV. DUTIES OF SELECTMEN IN ERECTING AND MAINTAINING GUIDE POSTS.

1. Towns to erect and maintain guide posts.
2. Penalty if selectmen do not annually report to the town where posts ought to be maintained.
3. Penalty on towns for not determining places for guide posts.
4. Description of guide posts and where to be erected.
5. Penalty if towns or selectmen neglect to erect guide posts.
6. Penalty for defacing guide boards.

1. Every town shall erect and maintain guide posts, on the highways and other ways within the town, at such places as shall be necessary or convenient for the direction of travellers, in the manner hereinafter provided. *R. S. ch.* 25, § 28.

2. The selectmen of each town shall submit to the inhabitants, at every annual meeting, a report of all the pla-

ces in which guide posts are erected and maintained within the town, and of all places, at which, in the opinion of the selectmen, they ought to be erected and maintained; and if the selectmen of any town shall neglect or refuse to make report as aforesaid, they shall severally forfeit the sum of ten dollars. *Ib.* § 29.

3. Upon the report of the selectmen, made according to the provisions of the preceding section, the town shall determine the several places, at which guide posts shall be erected and maintained, and a record thereof shall be made in the town records; and if any town shall neglect or refuse to determine said places, and to cause a record thereof to be made as aforesaid, such town shall forfeit the sum of five dollars, for every month during which they shall neglect or refuse so to do; and in such case, upon any trial for not erecting or maintaining guide posts, reported to be necessary or convenient by the selectmen, such town shall be estoped from alleging that such guide posts were not necessary or convenient. *Ib.* § 30.

4. At each of the places determined by the town, as provided in the preceding section, there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted or otherwise marked, the name of the next town or place, and such other town or place of note, as the selectmen shall think proper, to which each of such roads may lead, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof, pointing towards the towns or places, to which the said roads lead; provided nevertheless, that the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for said guide posts. *Ib.* § 31.

5. Every town, which shall neglect or refuse to erect and maintain guide posts, or some suitable substitutes

therefor, in the manner provided in this chapter, shall forfeit annually the sum of five dollars, for every guide post which they shall so neglect or refuse to maintain. *Ib.* § 32.

6. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any town, or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any mile stone, mile board or guide board, erected upon any highway or other public way, turnpike or railroad, or shall wilfully or maliciously deface or alter the inscription on any such stone or board, or shall wilfully or maliciously mar or deface any building, or any sign board, or shall extinguish any lamp, or break, destroy or remove any lamp, or any lamp post, or any railing or posts, erected on any bridge, side walk, street, highway, court or passage, shall be punished by imprisonment in the county jail, not more than six months, or by a fine not exceeding fifty dollars. *Ib.* § 33. *Ch.* 126, § 43.

V. DUTIES OF SELECTMEN IN PERAMBULATION OF TOWN LINES.

1. Bounds of towns, to remain as now established.
2. Perambulations and renewal of boundaries, every five years.
3. Notice of perambulation to adjoining towns.—Penalty for neglect to give notice.
4. Bound-stones to be erected, except, &c.
5. Perambulation of bounds between towns and unincorporated places.
6. " of towns adjoining other states.
7. Penalty for neglect of selectmen.

1. The boundary lines of every town shall remain as now established. *R. S. ch.* 15, § 1.

2. There shall be a perambulation of the boundary lines between towns, and the lines shall be run and the

marks renewed, once in five years, by two or more of the selectmen of each town, or such substitutes as they shall in writing appoint for that purpose; and the proceedings in the case, after every such renewal, shall be recorded in the town records of the respective towns. *Ib.* § 2.

3. Previously to any perambulation, the selectmen of the most ancient of the contiguous towns shall give ten days notice, in writing, to the selectmen of the adjoining town, of the time and place of meeting for such perambulation; and the selectmen, who shall neglect their duty in giving notice, or in attending, either personally or by their substitutes, shall severally forfeit the sum of twenty dollars, to the use of the town whose selectmen shall perform their duty. *Ib.* § 3.

4. The selectmen of the contiguous towns shall cause to be erected, at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines, at every angle thereof, except where such lines are bounded by the ocean or by some permanent stream of water; and the said monuments shall be of stone well set in, and at least four feet high, from the surface of the ground; and the initial letter of the respective names of said contiguous towns shall be plainly and legibly cut thereon; provided, however, that it shall not be necessary to erect a new monument in any place, where any permanent stone monument already exists, of two feet in height, above the surface of the ground. *Ib.* § 4.

5. The selectmen of every town, bordering upon any unincorporated place, shall, once in every five years, give notice to the assessors of such unincorporated place, of their intention to perambulate the lines, between their said towns and places respectively; and, upon such notice, the said assessors shall perform all the duties, required of selectmen in the like case, and be subject to all the penal-

ties, to be recovered and appropriated in the same manner, as selectmen in the like case, are subject to. *Ib.* § 5.

6. The selectmen of the several towns of this state, bordering on any other state, in all cases, where the lines between such other states and this state are settled and established, shall, once in every five years, give notice to the selectmen or other proper municipal officers of such towns in such other states, as adjoin the respective towns of this state, abovementioned, of their intention to perambulate the lines between their adjoining towns; and in all cases where such state lines are now in dispute, such perambulations of the lines between the towns in this state and the adjoining towns of such other states, shall be made, once in every five years, after such state lines shall be settled and established, and, if such notice and proposal shall be accepted by the officers to whom it is made, a perambulation shall be made of the boundary lines of such towns in the same manner, as between towns in this state; provided, however, that no boundary, erected by the authority of this state and any such adjoining state, shall be moved by the said selectmen or other municipal officers. *Ib.* § 6.

7. Any selectman, who shall neglect or refuse to cause the monuments to be erected as aforesaid, or to give notice to the selectmen or other proper municipal officers of towns, in the adjoining states, or to perambulate, if the last-mentioned selectmen or officers consent thereto, shall forfeit the sum of twenty dollars to the use of his county. *Ib.* § 7.

VI. DUTIES OF SELECTMEN AS TO COMMON SEWERS AND DRAINS.

1. Highways, streets, &c. not to be dug up to lay drains, &c. without consent of the selectmen.
2. Drains, &c. how to be constructed.
3. Persons benefited, to share the expense of making drains, repairing, &c.
4. Same subject.
5. Persons benefited, and refusing

to pay their proportions, shall pay double the amount.
6. Notice to be given before opening any drain.
7. Provisions not to affect agreements of parties.
8. Selectmen, &c. authorized to lay and repair main drains. Drains to be property of town or city in which they have been or shall be laid.
9. Proprietors of particular drains, that are entered into main drains, to be assessed to pay town, &c. part of the expense of main drains.
10. Assessments to be a lien for one year, on the real estate assessed, which may be sold for non-payment.
11. Provisions for appeal by persons aggrieved by assessments.
12. Towns and cities may be charged with part of the expense of main drains.
13. When to take effect.

1. If any person shall dig or break up the ground in any highway, street or lane, in any town, for the laying, altering or repairing of any drain, or common sewer, without the consent of the selectmen, in writing, he shall forfeit the sum of five dollars for each offence, to the use of the town, to be recovered by the treasurer thereof. *R. S. ch.* 27, § 1.

2. All drains and common sewers, which shall hereafter be made or repaired in any street or highway, shall be substantially made or repaired with brick or stone, or with such other materials, and in such manner, as the selectmen of the town shall permit or direct. *Ib.* § 2.

3. When any person shall, by the consent and under the direction of the selectmen, at his own charge, make and lay any common sewer or main drain, for the benefit of himself and others, who may think fit to join therein, every person, who afterwards shall enter his particular drain into the same, or by any more remote means shall receive any benefit thereby, for the draining of his cellar or land, shall pay to the owners of such common sewer or main drain, a proportional part of the charge of making and repairing the same, to be ascertained by the selectmen of the town, and certified under their hands; saving always to the party aggrieved by any such determination, a right to appeal to the county commissioners. *Ib.* § 3.

4. When any common sewer or main drain shall be stopped or gone to decay, so that it shall be necessary to

open the same, in order to repair it, or to remove such stoppage, all the persons who shall be benefited by such repair or removal of obstructions, as well those who do not as those who do, cause such repairs to be made or obstruction to be removed, shall pay to the person incurring the expense, their proportional parts thereof, to be ascertained and certified by the selectmen as aforesaid; saving to the party aggrieved an appeal as provided in the preceding section. *Ib.* § 4.

5. Every person so required to pay his proportional part of the expense of making or repairing any drain or common sewer, shall have notice of the sum, and of the person to whom the same is to be paid; and if he shall not pay the same, within seven days after such notice, to the person authorized by the selectmen to receive it, he shall be held to pay double the amcunt certified by the selectmen as aforesaid, with all expenses arising from such neglect; and the person so authorized by the selectmen may recover the said double amount and expenses, in an action in his own name for money laid out and expended. *Ib.* § 5.

6. Any person, who shall have occasion to open a common sewer or main drain, in order to clear and repair the same, shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising in such manner as the selectmen may direct, that such parties may, if they think proper, object thereto, and state their objections in person, or in writing to the selectmen; and if the selectmen shall judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not make their objections as aforesaid to the selectmen, within three days after such notice, or if the objections shall not be adjudged reasonable, the selectmen shall, in writing, under their hands, give liberty to the persons applying, to open such common sewer or main drain, and to clear and repair the

same; and all persons interested therein shall pay their proportions as before provided. *Ib.* § 6.

7. Nothing contained in the above provisions shall in any manner affect any covenants or agreements among the proprietors of such drains or common sewers. *Ib.* § 7.

8. The selectmen of the several towns, and the mayor and aldermen of the several cities in the Commonwealth, may lay, make, maintain and repair all main drains or common sewers in their respective towns and cities; and all the main drains or common sewers which have heretofore been or which may hereafter be constructed by any town or city, shall be taken and deemed to be the property of such town or city. *St.* 1841, *ch.* 115, § 1.

9. Every person who may hereafter enter his particular drain into any main drain or common sewer so constructed as aforesaid, for the draining of his cellar or land, or in obedience to the by-laws or ordinances of the town or city, or who, by any more remote means, shall receive any benefit thereby, for draining his cellar or land, shall pay to the town or city a proportional part of the charge of making and repairing such main drain or common sewer, to be ascertained and assessed by the selectmen in case of towns, and by the mayor and aldermen in case of cities, and by them certified, and notice thereof given to the party to be charged, or his tenant or lessee. *Ib.* § 2.

10. And all assessments so made shall constitute a lien on the real estates assessed, for one year after they are laid, and may, together with all incidental costs and expenses, be levied by sale thereof, if the assessment is not paid within three months after a written demand of payment, made either upon the person assessed, or upon any person occupying the estate; such sale to be conducted in like manner as sales for the non-payment of taxes. *Ib.* § 3.

11. Any person, who may deem himself aggrieved by any such assessment, may, at any time within three months

from receiving notice thereof, appeal to the county commissioners, or if the case arise in the city of Boston or in the town of Chelsea, to the court of common pleas, which court, in such case, shall appoint three disinterested persons, who may be inhabitants of Boston or other town, to settle and assess the share to be charged to such person; and the said county commissioners and referees may examine the parties and any other person, on oath, touching the matter submitted to them, and shall settle and determine the proper amount of charge or assessment; and the said referees, in the case of the city of Boston or the town of Chelsea, shall make return of their doings to the said court of common pleas, and in all cases the decision of said county commissioners and of said referees shall be final; and in case the assessment made by the selectmen or mayor and aldermen shall not be reduced on such appeal, the town or city shall recover costs, but otherwise shall pay costs: *provided, however*, that in all cases of an appeal as aforesaid, the appellant, before entering it, shall give one month's notice in writing to the selectmen, or mayor and aldermen, of his intention to appeal, and shall therein particularly specify the points of his objection to the assessment made by them, to which specification he shall be confined upon the hearing of the appeal. *Ib.* § 4.

12. Nothing contained in this title shall prevent any town or city from providing, by by-law or ordinance, or otherwise, that a part of the expense of constructing, maintaining and repairing main drains or common sewers shall be paid by such town or city; and in the city of Boston, not less than one quarter part of such expense shall be paid by said city, and shall not be charged upon those using the said main drains or common sewers. *Ib.* § 5.

13. The provisions contained in the five preceding sections shall not take effect in any city or town, until they shall have been accepted by the legal voters of any town,

at a meeting called for that purpose, or by the mayor and aldermen, and common council of any city. *Ib.* § 6.

VII. DUTIES OF SELECTMEN AS TO BINDING ORPHAN CHILDREN.

1. Minors how bound.
2. " how bound when under fourteen years.
3. Minors how bound when above fourteen.
4. To be bound by indenture of two parts.
5. One part to be kept for the minor.
6. Money, &c. paid by any master to be for the use of the apprentice.
7. Apprenticeship discharged by the death of the master.
8. Minor may be bound to a mistress.
9. Selectmen to enquire into the treatment of children bound out with their approbation.
10. In case of neglect or misconduct of master may file complaint &c.
11. Not liable to cost unless &c.

1. All children, under the age of fourteen years, may be bound as apprentices or servents, until that age, and all minors, above the age of fourteen years, may be bound as apprentices or servants, females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty-one years, in the manner prescribed in the eightieth chapter of the Revised Statutes. *R. S. ch.* 80, § 1.

2. Children, under the age of fourteen years, may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian, and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the selectmen of the town where they reside. *Ib.* § 2.

3. Minors above the age of fourteen years, may be bound in the same manner, provided, that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same. *Ib.* § 3.

4. No minor shall be bound as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the selectmen, their approbation shall be certified in writing, signed by them, upon each part of the indenture. *Ib.* § 4.

5. One part of the indenture shall be kept for the use of the minor, by his parent or guardian, when executed by them respectively; and when made with the approbation of the selectmen, it shall be deposited with the town clerk, and be safely kept in his office for the use of the minor. *Ib.* § 5.

6. All considerations, of money or other things, paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of these provisions shall be paid or secured to the sole use of the minor thereby bound. *Ib.* § 9.

7. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew. *Ib.* § 24.

8. Any indenture of apprenticeship or service, made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters. *Ib.* § 25.

9. It is the duty of the selectmen to inquire into the treatment of children bound with their approbation or that of their predecessors in office, and to defend them from all cruelty, neglect, and breach of contract on the part of their masters. *Ib.* § 10.

10. In case of such misconduct or neglect of the master, a complaint may be filed by the selectmen in the court of common pleas in like manner as may be done by overseers of the poor. *Ib.* § 11. *See ante, pp.* 172, 173, 174.

11. If the complaint shall not be maintained, the selectmen will not be liable to cost unless it shall appear that the complaint was made without any just or reasonable cause. *Ib.* § 13.

VIII. DUTIES OF SELECTMEN AS TO OFFENSIVE TRADES, THEATRICAL EXHIBITIONS, &c.

1. To assign places for offensive trades.
2. To assign places for livery stable and sail makers' lofts in maritime towns.
3. May license theatrical exhibitions, &c.
4. Penalty for setting up any exhibition contrary to law, or aiding therein.
5. May license sale of rockets, &c.
6. May license firing of the same.

1. The selectmen of every town, and the mayor and aldermen of the city of Boston, respectively, when they shall judge it necessary, shall, from time to time, assign certain places for the exercising of any trade or imployment, offensive to the inhabitants, or dangerous to the public health; and they shall forbid the exercise of either of them in places not so assigned; and all such assignments shall be entered in the records of the town or city; and they may be revoked, when the town or city officers shall think proper. *R. S. ch.* 21, § 47.

2. If any person shall occupy or use any building whatever, in any maritime town, for the business or employment of a sail maker or rigger, or keeper of a livery stable, except in such parts of the town as the selectmen thereof shall direct, he shall forfeit a sum not exceeding fifty dollars, for every month, during which he shall so occupy or use such building, and in the like proportion for a longer, or shorter time. *R. S. ch.* 58, § 4.

3. The selectmen of any town may at any meeting held for that purpose, license all theatrical exhibitions, public shows and exhibitions of any description, to which admis-

sion is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum, and to prevent the interruption of the public peace; provided, that no such license shall be in force for a longer term than the time for which such selectmen shall have been elected to office. *Ib.* § 1.

4. Any person, who shall set up or promote any such exhibition or show, or shall publish or advertise the same or otherwise aid or assist therein, without a license first obtained, as above provided, or contrary to the terms and conditions of such license, or while the same is suspended, shall forfeit a sum not exceeding two hundred dollars. *Ib.* § 2.

5. If any person shall have in his possession, with intent to sell, or shall offer for sale, or shall sell, or give away, any of the fireworks called rockets, crackers, squibs or serpents, without first having obtained the license of the selectmen of the town, he shall, for every such offence, forfeit a sum not exceeding ten dollars, to the use of the town in which the offence shall have been committed. *Ib.* § 5.

6. If any person shall have in his possession, with intent to set fire to, or shall set fire to any rocket, cracker, squib or serpent, or shall throw any lighted rocket, cracker, squib or serpent, within any town, wihout the license of the selectmen, he shall, for every offence, forfeit a sum not exceeding ten dollars, to the use of the town in which the offence shall have been committed. *Ib.* § 6.

IX. DUTIES OF SELECTMEN AS TO OYSTERS AND SHELL FISH, IN CERTAIN TOWNS.

1. Penalty for unlawfully taking oysters, &c.
2. Selectmen may give permits.
3. Penalty for taking, &c., any other shell fish in certain towns.
4. When vessels with oysters, &c, on board, may be seized.

5. The prohibitions as to shell fish, not to extend to Indians, &c.
6. Provisions as to the town of Chatham.
7. Penalty how recovered, &c.

1. No person shall take any oysters from their beds, or destroy them, or wilfully obstruct their growth therein, in any part of this state, except as is provided in the following section; and every person, who shall otherwise take, destroy, or obstruct the same, shall forfeit, for every bushel of oysters, (including the shells,) so taken or destroyed, the sum of two dollars. *R. S. ch.* 55, § 11.

2. The selectmen of any town, wherein oyster beds shall be, may give permits, in writing, to any person, to take oysters from their beds, at such times, in such quantities, and for such uses, as the said selectmen shall think reasonable, and shall express in their said permits; and every inhabitant of such town, without such permit, may take oysters from such beds therein, for the use of his family, from the first day of September to the first day of June, annually. *Ib.* §. 12.

3. If any person shall take any other shell fish from their beds, or destroy them, or wilfully obstruct their growth therein, in any of the towns of Malden, Medford, Charlestown, Rochester, Wareham, Hingham, Plymouth, Sandwich, Barnstable, Yarmouth, Eastham, Dennis, Wellfleet, Chatham, Nantucket, Edgartown, Tisbury, Dartmouth, Westport, Freetown, Fall River, Swanzey, New Bedford, Fairhaven, Somerset, Berkley, Brookline, Braintree, Weymouth, Chelsea, Brewster, Essex, Hull, Kingston, or Falmouth, except as is hereinafter excepted, the person, so offending, shall forfeit for every bushel of such other shell fish, including the shells thereof, the sum of one dollar; provided, the selectmen of each of the said towns may, at all times, give permits in writing, to any person, to take such other shell fish from their beds in said towns, at such times, in such quantities, and for such uses, as the said selectmen shall deem reasonable, and shall express in their

permit; and every inhabitant of each of the said towns, without such permit, may take such other shell fish from such beds therein, for the use of his family. *Ib.* § 13. *St.* 1838, *ch.* 110. *St.* 1840, *ch.* 9. *St.* 1843, *ch.* 10. *St.* 1839, *ch.* 84.

4. If any vessel, boat, or craft shall be found within the limits of any town, and not owned therein, with any oysters on board, taken in such town without such permit, or within the limits of any of the towns, mentioned in the preceding section, and not owned therein, with other shell fish on board, taken in such town without such permit, any inhabitant of any town, wherein such vessel, boat, or craft, shall so be found trespassing, may seize and detain the same, not exceeding forty eight hours, in order that the same, if need be, may, in that time, be attached or arrested by due process of law, to satisfy the said fines and forfeitures, with costs; provided, however, that if the owner or master of any such vessel, boat or craft, shall, before the prosecution is instituted for the same, pay such forfeiture to the treasurer of the town, in which the same shall be incurred, such vessel, boat or craft, with the effects therein, shall be discharged. *R. S. ch.* 55, § 14.

5. Nothing contained in the four preceding sections shall be construed to deprive any native Indians of the privilege of digging shell fish for their own consumption, or to prevent any fisherman from taking any quantity of shell fish, which he may want for bait, provided it do not exceed seven bushels, including their shells, at any one time. *Ib.* § 15.

6. No fisherman or any other person shall take, from the town of Chatham, any shell fish, for bait or other use, except clams and a shell fish commonly known by the name of horse-feet; and no quantity, exceeding seven bushels of clams, including the shells, or one hundred of said horse-feet, shall be taken in one week, for each vessel

or craft, nor in any case without a permit being first obtained from the selectmen of the town. *Ib.* § 16.

7. All the said fines and forfeitures shall enure to the use of the town wherein the offence shall be committed, and may be recovered, by indictment or on complaint before any justice of the peace, in the county where the offence was committed. *Ib.* § 17.

X. DUTY OF SELECTMEN AS TO HAY SCALES.

1. Weighers of hay to be appointed.
2. Their duty.
3. May be removed.
4. Penalty for setting up hay scales without authority.

1. The selectmen of each town, and the mayor and aldermen of any city may, from time to time, appoint, for a term not exceeding one year, some person or persons to have the superintendence of the hay scales belonging to such town or city, who shall weigh hay offered for sale in such town or city, and any other article offered to be weighed. *R. S. ch.* 28, § 95.

2. The persons so appointed shall conform to all such rules and regulations, as shall be established by the selectmen or city council, respectively, concerning the said hay scales, and the compensation or fees for weighing hay and other articles. *Ib.* § 96.

3. The said selectmen or city council, respectively, may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise. *Ib.* § 97.

4. If any person, not appointed as aforesaid, shall set up any hay scales in any town or city, for the purpose of weighing hay, or other articles, he shall forfeit the sum of twenty dollars a month, so long as the same shall be continued, to be recovered by an action of debt, and appropriated to

the use of said town or city; provided, however, that this and the three preceding sections shall not apply to any town, which shall not adopt the same, and shall cease to operate in such town, when the town shall so determine. *Ib.* 98.

XI. DUTY OF SELECTMEN AS TO THE KEEPING OF GUNPOWDER AND GUN COTTON.

1. Towns may order how gunpowder shall be kept within the town.
2. Justices to issue warrants for searching places where gunpowder is unlawfully kept.
3. Penalty for unlawfully keeping gunpowder.
4. Gun cotton.

1. The inhabitants of every town may order, that no gunpowder shall be kept in any place, within the limits of such town, unless the same shall be well secured in tight casks or canisters; and that no gunpowder, above the quantity of fifty pounds, shall be kept or deposited in any shop, store or other building, or in any ship or vessel, which shall be within the distance of twenty-five rods, from any other building or wharf; that no gunpowder, above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store or other building, within ten rods of any other building; and that no gunpowder, above the quantity of one pound, shall be kept or deposited in any shop, store or other building, within ten rods of any other building in such town, unless the same be well secured in copper, tin or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers. *R. S. ch.* 58, § 7.

2. Upon complaint made to any justice of the peace, by either of the selectmen or firewards of any town, that he has probable cause to suspect, and doth suspect, that gunpowder is deposited and kept within the limits of the town,

contrary to law, such justice may issue his warrant, directed to either of the constables of such town, ordering him to enter any shop, store or other building, or vessel, specified in said warrant, and there to make diligent search for the gunpowder, suspected to have been deposited or kept as aforesaid, and to make return of his doings to said justice forthwith. *Ib.* § 8.

3. If any person shall commit either of the offences, mentioned in the two preceding sections, he shall forfeit a sum not exceeding twenty dollars, to the use of the town, to be recovered by complaint before any justice of the peace; provided, that the four preceding sections shall not extend to any manufactory of gunpowder, nor in any case to prevent the transportation of gunpowder through any town, or from one part of any town to another part thereof. *Ib.* § 9.

4. The inhabitants of any town, and the government of any city in this Commonwealth, may order that no gun-cotton, or other substance prepared, like it, for explosion, shall be kept within the limits of such town or city, excepting under the regulations and penalties that are now applicable by law to gunpowder; and, if it shall be considered necessary for public safety, they may restrict the quantity to be so kept to one fifth of the weight of gunpowder allowed by law in each case provided for. *Stat. of* 1847, *c.* 51.

XII. DUTY OF SELECTMEN AS TO DEALERS IN SECOND HAND ARTICLES.

1. Licenses may be granted to deal in old and second-hand articles.
2. Place of dealing to be designated; conditions and term of license.
3. Penalty for dealing in such articles without license, or at places not designated.
4. City council may suspend the provisions of this title; provisions not to take effect in towns until adopted in town meeting.

1. The mayor and aldermen of any city, and the selectmen of any town, may license such persons as they deem suitable to be keepers of shops for the purchase, sale, or barter of junk, old metals, or of any second-hand articles, and to be dealers therein. *Stat.* 1839, *ch.* 53, § 1.

2. The licenses to such person shall designate the place where the business is to be carried on, and contain such conditions and restrictions as may be prescribed by the ordinances and by-laws of the city or town wherein the same are granted, and shall continue in force for one year unless sooner revoked. *Ib.* § 2.

3. No person unless licensed as aforesaid, shall keep any shop for the purchase, sale, or barter of the articles aforesaid, or be a dealer therein; nor shall any person, so licensed, keep such shop, or be a dealer in said articles in any other place or manner than as is designated in his license, or after notice to him that said license has been revoked, under the penalty of a sum not exceeding twenty dollars for every offence, to be recovered by complaint in any police court, or by indictment in any court of record in the county where such offence may be committed. *Ib.* § 3.

4. The city council of any city may suspend or dispense with the preceding provisions so far as the same apply to such city; provided, that no offence committed and no penalty incurred before such suspension shall take effect, shall be affected thereby; and the preceding provisions shall not extend to any town unless the inhabitants thereof shall, at a legal meeting, adopt the same. *Ib.* § 4.

XIII. POWER ON SELECTMEN AS TO RECOGNIZANCE OF TOWNS.

1. Selectmen may authorize persons to enter into recognizances in behalf of the town.

2. Surety not required in such recognizance.

1. When any city or town shall be required to enter into recognizance, the mayor and aldermen of the city, or the selectmen of the town, may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the city or town, and such recognizance shall be binding on the city or town, and on the inhabitants thereof, like any other contract lawfully made by such corporation. *Act of amendment*, § 88.

2. No surety shall be required in any recognizance of a city or town. *Ib.* § 89.

XIV. DUTIES OF SELECTMEN IN LAYING OUT TOWN AND PRIVATE WAYS.

1. Selectmen may lay out town ways and private ways.
2. Notice to be given by selectmen, before laying out, &c.
3. Owner of land to have time to remove trees, &c.
4. Effect of not removing within time allowed.
5. Time may be extended by jury, &c.
6. Damages how awarded & paid.
7. Damages not to be claimed till land is entered upon.
8. Filing of description with the clerk, and acceptance by the town, pre requisites to a town or private way.
9. A vote of a town that selectmen lay out a way, unauthorized and improper.
10. Highways shall not be laid out over any burying grounds, unless, &c.
11. Town ways shall not be laid out through private burying places.
12. Permanent bounds to be erected at the terminations and angles of ways.
13. Towns may discontinue town, &c. ways.
14. If selectmen unreasonably refuse, &c., party may appeal to commissioners.
15. Omission of selectmen to make written report, constitutes such refusal.
16. When a town way is to be considered as established.
17. Appeal given, if towns refuse to accept ways.
18. Same, if towns refuse to discontinue.
19. When towns are debarred from laying out, &c.
20. When town shall not contest legality of town ways.
21. Towns may raise money for highways and town ways.
22. Limitation of power.
23. County commissioners may lay out private ways in certain cases.
24. Ways, &c, established by dedication not to be chargeable to towns, &c., until laid out according to law.
25. Entrances of such ways to be closed up, or the public otherwise cautioned against the use thereof, when necessary for the public safety.
26. Towns and cities liable for damages arising from defects in such ways, unless closed up, or notice given.

1. The selectmen of the several towns may lay out, alter or widen town ways, for the use of their respective towns, and private ways for the use of one or more of the inhabitants thereof. *R. S. ch.* 24, § 66.

It is no objection to the exercise of the authority by a town, that the road to be laid out will be as much used by the inhabitants of other places, or by strangers who may have occasion to pass on it, as by those for whose use it was declared to be established; for the real utility of a road to any town may consist less in the actual passing and repassing through it, by the inhabitants of the town, than in facilitating the intercourse of strangers or inhabitants of other towns with them. 6 *Mass.* 7.

2. No such town way or private way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intention of the selectmen of the town to lay out or alter the same, shall be left by them, or by their order, at the usual place of abode of the owners of the land, over which such way is proposed to be laid out or altered, or unless such notice be delivered to such owner in person, or to his tenant or authorized agent; provided, that if the owner shall have no such place of abode in the town, and no tenant or authorized agent therein known to the selectmen, or if, being a resident in the town, he shall not be known as such to the selectmen, then such notice shall be posted up in some public place in the town, seven days at least before laying out such way. *R. S ch.* 24, § 67.

3. When any town or private way shall be laid out, altered, or widened by selectmen or county commissioners, they shall, in their report or return thereof, allow the owner of the land through which said way may pass, a reasonable time to take off his trees, fences, and other property, which may obstruct the building of such way. *Stat. of* 1848, *ch.* 98, § 1.

4. If said owner shall not remove the same within the time allowed for that purpose, he shall be deemed to have relinquished his right thereto, for the benefit of the town, if said way be a town way; and if said way be a private way, for the benefit of such person or persons as said selectmen or county commissioners shall determine. *Ib.* § 2.

5. If a jury shall be ordered to assess the damages done by the location, alteration or widening of such way, they may extend the time for the owner of the land to remove his trees, fences, and other property, as aforesaid; and if the owner shall neglect to remove the same within such extended time, he shall be deemed to have relinquished his claim thereto, as before provided. *Ib.* § 3.

6. If any damage shall be sustained by any person in their property, by the laying out, altering or discontinuing of any town way or private way, they shall receive such compensation as the selectmen shall determine; which shall be paid by the town, if it is a town way, but if a private way, then by the persons for whose use it shall be so laid out, altered or discontinued; unless the selectmen shall deem it reasonable in such case, that any part of it shall be paid by the town and the residue by the said persons; and in case any person shall be aggrieved by such determination of the selectmen, he may, upon application to the commissoners, have his damages ascertained by a jury, or, if he shall so elect, by a committee, to be appointed by the said commissioners, in like manner as is provided in respect to the recovery of damages for laying out highways. *Ib.* § 68. *See R. S. ch.* 24.

7. No claim for damages sustained by any persons in their property, by any such laying out or alterations, shall be made, until the land over which such ways are located shall have been entered upon, and possession taken, for the purpose of constructing said ways or alterations: *provided*,

that when any person, claiming damages, shall have been put to any expense for injuries sustained by such proceedings the selectmen aforesaid shall allow him full indemnity therefor, although his land may not have been so entered upon and possession taken as aforesaid; *and provided, further*, that any party aggrieved by the estimate of said last named damages may have a jury to revise such estimate, in the same way and manner as is now provided in case of town ways and private ways. *St. of* 1842, *ch.* 86, § 1. *St. of* 1847, *ch.* 259, § 4.

8. No town way, or private way, which may have been laid out or altered by the selectmen, shall be established, until such laying out, or alteration, with the boundaries and admeasurements of the said way, shall have been reported to the town, and accepted and allowed, at some public meeting of the inhabitants, regularly warned and notified therefor, nor unless such laying out, or alteration, with the boundaries and admeasurments aforesaid, shall have been filed in the office of the town clerk, seven days at least before such meeting. *R. S. ch.* 24, § 69.

9. A vote of a town that the selectmen shall lay out a particular town way, is unauthorized and improper; it being the intention of the law that the selectmen should exercise their own discretion on the subject. 5 *Pick.* 392.

10. No highway or town way shall be laid out or constructed in, upon, or through, any enclosure used or appropriated for the burial of the dead, unless authority to that effect shall be specially granted by law, or the consent of the inhabitants of the town, where such enclosure is situated, shall be first obtained, under the penalty in this behalf provided in the one hundred and thirtieth chapter of the Revised Statutes. *R. S. ch.* 24, § 59.

11. No highway or town way shall be laid out or constructed in, upon, or through, such part of any enclosure, belonging to private proprietors, as may be used or appro-

priated to the burial of the dead, unless the consent of such proprietors shall be first obtained therefor. *Ib.* § 60.

12. The selectmen of the several towns and the mayor and aldermen of the several cities of this Commonwealth, shall cause permanent stone bounds, not less than three feet long,—two feet of which, at least, shall be inserted in the earth,—to be erected at the termini and angles of all roads hereafter laid out by them, when practicable; and when not practicable, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for said stones. *Stat. of* 1848, *ch.* 192.

13. Any town, at any meeting regularly called for that purpose, may discontinue any town way or private way. *Ib.* § 70.

14. If the selectmen of any town shall unreasonably refuse or neglect to lay out, or alter any such town way or private way, when requested in writing by one or more of the inhabitants thereof, the commissioners, at any meeting within one year, on the application of any person aggrieved, by petition in writing, may cause the said town way or private way to be laid out or altered; and they shall ascertain the place and course of the way, and estimate the damages sustained by any person, by reason thereof, and the same, with all costs of the proceedings, shall be paid by the town, if it be a town way; and if it be a private way, the damages and costs, or such part thereof, as the commissioners shall judge reasonable, shall be paid by the persons for whose use it is laid out or altered, and the residue, if any, shall be paid by the town. *R. S. c.* 24, § 71.

15. The omission of selectmen, to make a writen report to the town of their alteration of a town way, on a written petition for an alteration, is such a refusal or neglect to alter as just jurisdiction of the matter to the commissioners. 9 *Met.* 423.

16. When a town way has been regularly laid out by the selectmen, and approved by the town, it must be considered as established; and the surveyors or selectmen, acting as such, cannot be tresspassers in making such road passable, although the year, during which an application may be made to the commissioners, had not elapsed. 6 *Mass.* 7.

17. If any town shall unreasonably refuse or delay to approve and allow any town way, or private way, laid out or altered by the selectmen thereof, and to put the same on record, any person aggrieved by such refusal or delay, may within one year thereafter apply by petition in writing to the commissioners; and the said commissioners may, unless sufficient cause shall be shown against such application, approve and allow of the way, as laid out or altered by the selectmen, and direct the said laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the like effect, as if accepted by the town and recorded. *R. S. ch.* 24, § 72.

18. The commissioners may also, upon the application in writing of any person, aggrieved by the refusal of any town to discontinue a town way, or private way, and after due notice, and hearing all parties interested, order such way to be discontinued. *Ib.* § 73.

19. When any town way shall have been laid out or altered by the commissioners, it shall not, within two years thereafter, be discontinued or altered by the town; and when any such way shall have been discontinued by the commissioners, the town shall not, within two years, thereafter, lay out the same again. *Ib.* § 74.

20. No town shall, in any case, be permitted to contest the legality of any way, laid out by such town, and accepted and recorded as above provided. *Ib.* § 77.

21. Every town may at any legal meeting regularly notified for that purpose, vote to raise any sum of money, to

be laid out for the making of highways and town ways, within such towns as they may deem necessary; and may, if they see fit, direct the same to be assessed in money on the polls and estates, real and personal, of the inhabitants, residents and non-residents, of their town, and to be collected as other town charges are by law assessed and collected. *Ib.* § 78.

22. A town has no authority to raise money to aid in the construction of a road, which is by law to be made at the expense of the county. 11 *Pick.* 396.

23. When the location or alteration of a private way is desired in any town for the use of one or more persons not being inhabitants thereof, or when the location or alteration of any private way is desired, lying partly in one town and partly in another, the county commissioners of the county or counties, where the way is prayed for, may cause such way to be located or altered, proceeding therein, as is provided by law, in case where the selectmen of any town refuse to lay out any private way. *Stat.* 1837, *ch.* 164.

24. No way heretofore opened and dedicated to the public use and not already become a public way, and no way hereafter opened and dedicated to the public use shall become chargeable upon any city or town, unless such ways shall be laid out and established by such city or town, in the manner prescribed by the statutes of this Commonwealth. *Stat. of* 1846, *ch.* 203, § 1.

25. It shall be the duty of the mayor and aldermen of each city, and of the selectmen of each town in this Commonwealth, and they are hereby authorized and required, whenever, and so long as the public safety may demand it, to direct and cause the entrances of all the ways aforesaid, entering on and uniting with any existing public way, to be closed up, or, by other sufficient means, to caution the public against entering upon such ways. *Ib.* § 2.

26. In case any city or town shall not close up the entrances to the ways aforesaid, or give other sufficient notice that the same are dangerous, such city or town so neglecting, shall be liable for any damages arising from any defects therein, in the same manner as if such ways were duly laid out and established. *Ib.* § 3.

XV. DUTIES OF SELECTMEN UNDER THE MILITIA LAWS.

1. Commanding officers of companies to return to the adjutant general the number of members present and absent, on days of inspection, training, and review.
2. Adjutant general to return to mayor and aldermen and selectmen, the number of men entitled to pay, according to such returns.
3. Commanding officers to make alphabetical lists of members performing duty, and certify same to mayor and aldermen and selectmen.
4. Cities and towns to pay for the military services, returned as above, and to be reimbursed by the Commonwealth upon making returns thereof to the adjutant general.
5. Penalty of neglect.
6. Compensation allowed to members of brigade bands.
7. Masters of bands to make returns of members performing duty to adjutant general;—and commanding officers to certify the same.
8. Masters of bands to make alphabetical lists of members performing duty, and certify same to mayor and aldermen and selectmen, who shall provide for their payment.
9. What bounty officers and soldiers are to receive.

1. The commanding officer of every company raised at large shall, within twenty days after each of the days of inspection, trainings and review, required by law, make to the adjutant general a return of the number of men belonging to his company, that appeared, armed, uniformed and equipped, and performed duty on any such day, together with the number of men belonging to his company that were absent; it being provided that not more than sixty-four in number shall be so returned as having done such duty. *St. of* 1845, *c.* 243, § 1.

2. The adjutant general shall, within ten days after the receipt of the last return provided for in the first section, make to the mayor and aldermen of any city, and the selectmen of

any town, in which the company armory or place of assembling the company is situated, a return of the number of men, that, by the returns made to him under the first section, are entitled to the pay provided for in the section specifying the number of men returned under each parade, and the amounts respectively due therefor. *Ib.* § 2.

3. The commanding officer of every company raised at large, shall, after each of the days of inspection, training and review required by law, make out an alphabetical roll of the persons, not exceeding sixty-four in number, who shall have appeared, armed, uniformed and equipped, and performed duty in his company, on each of said days; and, within twenty days, annually, after the last parade, shall deliver the same, certified under his oath to be correct and true, to the mayor and aldermen of any city, or the selectmen of any town, in which the company armory, or place of assembling the company, is situated: *provided, however*, that such roll shall contain the names of those persons only who have performed the duty required by law. *Ib.* § 3.

4. The mayor and aldermen of each city, and the selectmen of each town, to whom the returns named in the preceding sections are made, shall on or before the first day of November, annually, make out a complete list of all the persons who appear from said returns to be entitled to the bounty mentioned in the following section, and shall thereupon draw their warrants on their respective treasurers, directing them to pay the amount due to the persons named in said returns; and the mayor and aldermen, and selectmen aforesaid, shall return to the adjutant general, on or before the fifteenth day of January, annually, the lists of persons so to be paid, and the amount for which their respective warrants have been drawn; and the adjutant general shall on or before the twenty-fifth day of January, annually, ascertain from the returns made to him, the amount of money which will be necessary to pay the sev-

eral cities and towns, and submit the same to the Governor of the Commonwealth, who is hereby authorized to draw his warrant on the treasurer of the Commonwealth for the re-payment of the sums advanced. *St. of* 1844, *c.* 101, § 5.

5. Any city or town that shall neglect to make return to the adjutant general, as is directed in the last section, shall forfeit its right to be reimbursed by the State. *St. of* 1845, *c.* 243, § 10.

6. Each member of a brigade band shall be entitled to receive the sum of three dollars for each full day's service, and one half that sum for each half day's service, rendered in obedience to an order from the commanding officer of the brigade to which such band may belong, it being provided that such commanding officer shall not order out said band in full, or in sections thereof, more than three times, taking the parades of both, in any one year.

7. The master of every brigade band shall, within ten days after the parade thereof, or of any section thereof, made under order of the commanding officer of the brigade to which such band may belong, make to the adjutant general an alphabetical return of the names of the men who appeared in uniform and performed duty in such band on any such day, the last return to be made on or before the tenth day of November, annually; and the said return shall contain a certificate signed by the commanding officer, to whom said band, or any section thereof, was ordered to report itself for duty, setting forth that the duty was well and faithfully performed, in fault of which the members of such band, or of any section thereof, shall forfeit the pay provided for in the sixth section. *Ib.* § 5.

8. The master of each brigade band shall further make, after each day of the parade thereof, or of any section thereof, an alphabetical roll of the names of such members of the band as appeared in uniform and performed duty as

set forth in the sixth section, and, within twenty days after the last parade, shall deliver the same, certified under his oath to be correct, to the mayor and aldermen of any city, or the selectmen of any town, within which such master may reside, and the mayor and aldermen of such city, and the selectmen of such town, shall proceed to provide for the pay of such members, and for the reimbursement thereof on the part of the Commonwealth, in the same manner as is provided for in the case of members of the volunteer companies of the militia : *provided*, that the adjutant general shall have first certified to such mayor and aldermen, or such selectmen, that from returns made to him, it appears that the members aforesaid have well and faithfully performed the duties required of them. *Ib.* § 6.

9. The officers and soldiers of every company raised at large, who shall perform the duties required in the 23d and 24th sections of the Statutes of 1840, ch. 106, and the 2d section of the Statutes of 1843, ch. 84, shall each be entitled to receive one dollar for the inspection duty in May, one dollar and fifty cents for each of the two company trainings, and two dollars for the annual inspection and review. *St.* 1844, *c.* 101, § 1.

XVI. DUTIES OF SELECTMEN, CONCERNING HAWKERS AND PEDLARS.

1. Hawkers, pedlars, petty chapmen, and other itinerant dealers, to be licensed.
2. Articles enumerated, which may be sold by hawkers, &c. without license ;—and power of cities and towns to restrain such sales.
3. Licenses to be granted by the secretary of the Commonwealth, upon the certificate of selectmen or mayors, as to the citizenship, residence, and good repute of the applicants.
4. Extent of such licenses,—sums to be paid to the treasurers of towns or cities therein mentioned,—and powers conferred thereby.
5. Sums payable for such licenses.
6. Records of licenses,—how and and by whom to be made.
7. Sums paid for licenses,—to belong to the state, or to the county, city, or town, receiving the same.
8. Name, residence, and number of license to be borne on the vehicle or parcels of person licensed; and license to be exhibited to selectmen, &c. when demanded.

1. From and after the first day of July next, every hawker, pedlar, or petty chapman, or other person, going from town to town, or from place to place, or from dwelling-house to dwelling-house, in the same town, either on foot, or with one or more horses, or otherwise carrying for sale, or exposing to sale, any goods, wares or merchandise, or taking a residence in any town for that purpose, for a less time than one year, except as provided in the second section, or under a license, granted as hereinafter provided, shall forfeit a sum not exceeding two hundred dollars for every offence; and that nothing contained in this section shall be construed to restrain sales at public auction, according to law. *Stat. of* 1846, *c.* 244, § 1.

2. Any person may go about, as aforesaid, selling and exposing to sale, any fruits and provisions whatever, live animals, brooms, agricultural implements, fuel, newspapers, books, or pamphlets, agricultural products of the United States, the products of his own labor or any labor of his own family; but the sale of jewelry, wines, spirituous liquors, playing cards, indigo, and feathers, as aforesaid, is hereby prohibited: *provided*, if the city council of any city shall authorize the mayor and aldermen of such city, or the inhabitants of any town shall authorize the selectmen of such town to restrain the sale, by minors, of any goods, wares, or merchandise, the sale of which in the manner aforesaid, is permitted in this section, such mayor and aldermen, or selectmen, while such authority remains in force, may exercise in the premises, all the powers they are by law authorized to exercise in relation to theatrical exhibitions and public shows; and any violation of such restraint, when the same shall be imposed by the regulations of said mayor and aldermen, or said selectmen, or any sale of the articles in question, without a license, where the same shall be required in exercise of the authority above granted, shall subject the persons guilty of the same to a

penalty not exceeding ten dollars for every offence: *provided, further*, that no such restraint imposed, or license granted, shall remain in force beyond the term of office, of those by whom the same was imposed or granted. *Ib.* § 2.

3. The secretary of the Commonwealth may grant a license to go about selling and exposing to sale, any goods, wares or merchandise, not prohibited in the second section, to any applicant, who shall file in his office, a certificate, signed by a majority of the selectmen of any town, or the mayor of any city, in the Commonwealth, which certificate shall state that, to the best knowledge and belief of such mayor or selectmen, the applicant therein named, is a citizen of the United States, and resides in such city or town, and is in good repute for morals and integrity. And the mayor or selectmen as aforesaid, before granting such certificate, shall require every such applicant to make oath that he is a citizen of the United States, and is a resident of such city or town, which oath shall be certified by a justice of the peace and accompany the certificate. *Ib.* § 3.

4. The secretary of the Commonwealth shall cause to be inserted, in every license, the names of such cities and towns as the applicant shall select, with the sum to be paid to the respective treasurers thereof, annexed, and shall receive from the applicant one dollar for each city or town so inserted; and every person so licensed, is hereby authorized to sell, as aforesaid, any goods, wares or merchandise, not prohibited in the second section, in any city or town mentioned in his license, upon first tendering to the treasurer thereof, the sum stated to be due; and the treasurer of such city or town shall make a certificate on the face of the license, stating the sum so received. No license granted under this act shall be pleaded in bar to any complaint against the person licensed, if it be proved that he exposed to sale in any county, city or town mentioned in

such license, any article not permitted or prohibited in the second section, prior to tendering to the treasurer thereof the sum required by this act, or in any county, city or town, not mentioned in such license: *provided*, that this act shall not be construed to require any person so licensed, to pay the sum due to the treasurer of any county, city, or town, before he is prepared to trade therein. *Ib.* § 4.

5. Every person licensed under the foregoing sections, in addition to the sum payable to the secretary of the Commonwealth, shall pay to the treasurer of each city or town, mentioned in his license, the sums following:—For every town containing not more than one thousand inhabitants, according to the United States census, next preceding the date of any license, three dollars. For every town containing more than one thousand and not more than two thousand inhabitants, six dollars. For every town containing more than two thousand and not more than three thousand inhabitants, eight dollars. For every town containing more than three thousand and not more than four thousand inhabitants, ten dollars. And for every town containing more than four thousand inhabitants, the sum shall be increased in addition, to ten dollars, one dollar for every one thousand inhabitants, over four thousand contained therein: *provided*, that the sum to be paid to the treasurer of any city or town shall, in no case, exceed twenty-five dollars. *Ib.* § 5.

6. The secretary of the Commonwealth shall keep a record of all licenses granted, with the number of each, the name and residence of the person licensed, and the counties, cities and towns mentioned therein, and also of all special state licenses. The treasurers of the counties, cities and towns, shall severally keep records of all licenses upon which the sums provided in this act have been paid, with the number of each, the name and residence of

the persons licensed, and the sums received thereon, and all such records shall be open for public inspection. *Ib.* § 6.

7. All sums paid to the secretary of the Commonwealth under this act, shall be for the use of the Commonwealth; and all sums paid to the treasurer of any county, city or town, shall be for the use of the county, city or town, so receiving the same. Any license granted under this act, upon proceedings had by the applicant, as provided in the third section, may be transferred by the secretary of the Commonwealth, and the person to whom such license is transferred, shall be liable, in all respects, as if he were the person originally licensed. *Ib.* § 8.

8. Every person licensed as herein provided, shall post his name, residence, and the number of his license, in a conspicuous manner, upon his parcels or vehicle, and whenever such license is demanded of him, by any selectman or justice of the peace, he shall forthwith exhibit it, and if he neglect or refuse to do so, shall be subject to the same penalty as if he were without a license, and this act, or a synopsis thereof, shall be printed on every license. *Ib.* § 9.

SURVEYORS OF HIGHWAYS, AND REPAIR OF HIGHWAYS.

1. Choice and qualifications of surveyors.
2. Penalty for refusing to serve.
3. " for neglect of duty.
4. May be prosecuted for deficiency of highways, in case, &c.
5. Limits of surveyors to be assigned by selectmen or assessors.
6. Construction of the statute.
7. Highways to be kept in repair by towns.
8. If loss of life happen, through defect, &c., the executors, &c, may recover $1000.
9. What damages recoverable for injury to person or property.
10. Weight of load on road not to exceed six tons.
11. Notice to a town of defect in highway may be inferred from notoriety of defect.
12. From what time town is responsible for defect in highway.
13. Party liable, may tender sufficient, &c.

14. Penalty on towns, for neglect, &c.
15. Fines imposed, to be appropriated for repairs.
16. If town, &c., has, within six years, made repairs, they shall not deny location.
17. Surveyors liable to towns for deficiencies, &c,
18. Towns pay all damages occasioned by repairs of ways.
19. Towns may regulate traveling over town bridges, in case, &c.
20. By laws in such case to be posted up.
21. Gates, rails, &c. on highways and town ways may be removed.
22. Same subject.
23. Towns may raise money to be expended in labor and materials to repair highways.
24. Towns may raise highway taxes in money.
25. Non-residents, how assessed for highway.
26. Surveyors of highways authorized to remove all obstructions.
27. Surveyor, not to remove any fence, &c., put up to prevent the spreading of diseases.
28. Surveyors shall not turn water courses so as to incommode, &c.
29. Half the tax to be expended before the first of July.
30. Money, how expended.
31. Surveyors to give notice of the times for working taxes.
32. Delinquents, to be returned to assessors, and their tax to be collected in money.
33. Surveyor's power when the sum voted is deficient, or not paid in.
34. If towns neglect to raise money, surveyors, with consent of selectmen, may repair at town's expense.
35. Surveyor cannot repair at his own expense and charge town.
36. Surveyors may be authorized to contract for repairing ways.
37. Surveyors may be authorized to collect taxes in money in case, &c.
38. Surveyors to exhibit tax bill and render account of moneys expended.
39. Surveyors to pay over any surplus in their hands.
40. Penalty for any neglect to pay over.

1. Each town shall choose at the annual meeting in such manner as it shall determine, one or more suitable persons to be surveyors of highways, who shall be sworn to a faithful discharge of the duties of office. *R. S. ch.* 15, § 33.

2. If any person, chosen surveyor of highways, shall refuse to serve in that office, he shall forfeit to the use of his town, a sum not exceeding ten dollars ; but no person shall be obliged to serve in that office oftener than once in three years. *Ib.* § 81.

3. Every surveyor of highways, who shall accept that trust and neglect the duties of his office, shall forfeit to the use of the town, the sum of ten dollars for each neglect. *Ib.* § 82.

4. Any surveyor of highways may be prosecuted by indictment, for any deficiency in the highways within its lim-

its, occasioned by his fault or neglect. *Ib.* § 83. *See* 11 *Met.* 108.

5. The selectmen or assessors of every town, having more than one surveyor of highways, shall, annually, in writing, before the first day of May, assign to each surveyor the limits and divisions of the highways and town ways, to be kept in repair by him. *R. S. ch.* 25 § 7.

6. In the construction of a similar provision in the statute of 1796, ch. 58, sec. 4, the court held that the power of the Surveyor did not result from this act of the selectmen: that it merely constituted him the sole judge of the duty to be performed within his limits; whereas, if no limits were assigned, it might be necessary for all the Surveyors to act together, or by the voice of a majority of them. The statute being merely directory, their powers did not depend upon its being executed. 1 *Pick.* 426.

7. All highways, town ways, causeways and bridges, within the bounds of any town, shall be kept in repair, at the expense of such town, where other sufficient provision is not made therefor, so that the same may be safe and convenient for travellers, with their horses, teams and carriages, at all seasons of the year. *R. S. ch.* 25, § 1.

8. If the life of any person shall be lost, by reason of any defect or want of repair of any highway, town way, causeway or bridge, or for want of suitable rails on such way or bridge, the county, town or person, that is by law obliged to repair the same, shall be liable to a fine of one thousand dollars, to be recovered by indictment to the use of the executor or administrator of the deceased person for the benefit of his heirs, devisees or creditors; provided, that the said county, town or person, shall have had previous reasonable notice of such defect or want of repair of such way or bridge. *Ib.* § 21.

9. If any person shall receive any injury in his person or property, by reason of any defect or want of repair,

which has existed for the space of twenty-four hours, in any highway, town way, causeway or bridge, he may recover, in an action on the case, of the county, town, or person, respectively, that is by law obliged to repair the same, the amount of damage sustained thereby; and if the said county, town, or person, respectively, had reasonable notice of any defect or want of repair, in such highway, town way, causeway or bridge, the person so injured may recover double the damages so sustained. *Ib.* § 22.

A person who travels on the Lord's day neither from necessity or charity, cannot maintain an action for an injury received by him while so travelling, by reason of a defect in a highway which a town is obliged to repair. 10 *Met.* 363.

An action against a town under this section, cannot be maintained by a party who goes out of the highway because of the defect, and there receives an injury. 8 *Met.* 388.

10. No town or other corporation shall be liable for damages for any deficiency in their highways or bridges, to any person whose carriage and load thereon shall exceed the weight of six tons. *St.* 1838, *c.* 104.

11. In an action to recover double damages under the provision of the statute of 1786, ch. 81, sec. 7, like that in the eighth section, the court decided, that notice to a town of a defect in a highway, may be inferred from the notoriety of the defect and its continuance for such a length of time as to lead to the presumption that the proper officers of the town knew, or, with proper vigilance and care might have known it. 13 *Pick.* 94. *See also* 1 *Mass.* 153.

12. The town becomes responsible for an injury occasioned by a defect in a highway from the time when the way is opened for public travel, and it is no justification to the town that such defect existed in the road as it was left by the commissioners. 13 *Pick.* 102. 21 *Pick.* 44.

13. If, before the entry of any action provided for in the ninth section, the defendant tender to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff do not accept the same, and do not recover upon the trial more than the sum so tendered, the defendant shall recover his costs. *R. S. ch.* 25, § 23.

14. If any town shall neglect to repair any of the ways or bridges, which it is by law obliged to keep in repair, or shall neglect to make the same safe or convenient, when incumbered with snow, such town shall be liable to pay such fine as the court, in its discretion, may order. *Ib.* § 24.

15. All fines, imposed on any town, for deficiencies in the ways and bridges within the same, shall be appropriated to the repairing of such ways and bridges; and the court, imposing any such fine, shall appoint one or more persons, to superintend the collection and application of the same to the purpose aforesaid; and every person so appointed shall make a return of his doings therein to the said court. *Ib.* § 25.

16. If, on the trial of any indictment or action, brought to recover damages for an injury, received by reason of any deficiency or want of repair, in a highway, town way, causeway or bridge, it shall appear that the county, town or person, against whom such suit is brought, has, at any time, within six years before such injury, made repairs on such way or bridge, it shall not be competent to such county, town or person to deny the location thereof. *Ib.* § 26.

17. In case any town shall be sentenced to pay a fine, for a deficiency in the highways or town ways within the same, the surveyor, within whose limits such deficiency may be found, shall be liable to the town for the amount of such fine and all costs of the prosecution, to be recovered by the town in an action of the case, provided such defic-

iency exist through the fault or neglect of such surveyor. *R. S. ch.* 15, § 4.

18. When any owner of land, adjoining a highway or town way, in any town or city, shall sustain any damage in his property by reason of any raising, lowering, or other act, done for the purpose of repairing such way, the said owner shall have compensation therefor, to be determined by the selectmen of the town, or the mayor and aldermen of the city; and if the owner shall be aggrieved by such determination of the selectmen or mayor and aldermen, he may have his damages ascertained by a jury, in like manner as they are to be ascertained in the case of laying out highways; and they shall allow, by way of set-off, the benefit, if any, which the complainant may receive by reason of such alteration or repair. *R. S. ch.* 25, § 6.

The owner is not entitled to damages until the act of raising or lowering is done. 8 *Met.* 172.

19. Any town may, at any annual meeting, establish by-laws to prevent all persons from riding or driving horses, at a rate faster than a walk, over any bridge, within the limits of such town, which shall have cost not less than five hundred dollars; and annex penalties not exceeding one dollar for any breach thereof, to be recovered in the name of the town treasurer; but such by-laws shall first be approved by the commissioners for the county in which such town lies. *Ib.* § 45.

20. No person shall be liable to any of the penalties in the preceding section, unless such town shall cause to be posted up and kept at each end of the said bridges in some conspicuous place, a board painted with a white ground, containing in black letters the substance of its said by-laws. *Ib.* § 46.

21. It shall be lawful for any person to take down and remove any gates, rails, bars or fence, upon or across any highway, unless the same shall have been there placed, for

the purpose of preventing the spreading of any disease, dangerous to the public health, or unless the same shall have been erected or continued by the license of the county commissioners for the same county, or of the selectmen of the town: and any person, so aggrieved by such taking down and removal, may apply to the said commissioners, or said selectmen, respectively, who, if it shall appear that such gates, rails, bars or fence were erected by license as aforesaid, may order the same to be replaced. *Ib.* § 27.

22. If any gates, rails, bars or fence shall be upon or across any town way or private way, the same may be removed by the order of any justice of the peace of the county where such way is, unless the same shall have been there placed, for the purpose of preventing the spreading of any disease dangerous to the public health, or unless the same were erected or continued by license of the town or of the person, for whose use such private way was laid out; and any person, aggrieved by such removal, may apply to the commissioners for the same county; and if upon examination, it shall appear that the same were erected or continued by license as aforesaid, the said commissioners shall order them to be replaced. *Ib.* § 43.

23. Every town shall raise such sum of money *to be expended in labor and materials*, on the highways and townways, as it shall determine to be necessary; and the assessors shall assess the same on the polls and estates, real and personal, of the inhabitants, residents and non residents, as other town charges are assessed; and shall deliver to each surveyor a list of the persons within his limits, and the sums at which they are severally assessed. *Ib.* § 8.

24. Any town may vote to raise any sum of money, which such town may judge necessary, for making and repairing the highways and townways within the same; and may further order, that the same shall be assessed upon the polls and estates of the inhabitants, residents, and

non residents of their town, as other town charges are assessed, and the same shall be collected as other town taxes are collected. *Ib.* § 9.

25. The lands of non resident proprietors shall be taxed for the making and repairing of highways, in the same manner as for other town taxes; and upon default of payment, the same proceedings shall be had, as are provided for the collection of other town taxes of such persons. *Ib.* § 20.

26. Every surveyor of highways shall have full power (except as provided in the following section,) to cut down or lop off all trees and bushes, and to dig up and remove all stones, stumps, fences, gates, bars, enclosures, or other things, that shall in any manner obstruct or incumber any highway or town way, or hinder, incommode, or endanger persons travelling thereon; and when any such way is incumbered with snow, he shall also forthwith cause the same to be removed or so trodden down, as to make the way safe and convenient. *Ib.* § 3.

27. No surveyor or other person shall remove or take down any fences, gates, or bars, placed on any highway or town way, for the purpose of preventing the spreading of any disease, which may be dangerous to the public health. *Ib* § 4.

28. No surveyor of highways shall, without the approbation of the selectmen first being had in writing, cause any water-course, occasioned by the wash of a highway or town way, to be so conveyed by the side of such way, as to incommode any person's house, store, shop, or other buildings, or to obstruct any person in the prosecution of his business; and any person, aggrieved by the conveying of such water-course, in manner aforesaid, may complain to the selectmen, who, on receiving such complaint, shall view the water-course complained of, and after due examination of the same, may direct the surveyor to alter the

said water-course, in such manner as they shall determine. *Ib.* § 5.

29. One half, at least, of the sums of money, granted by any town, for repairing highways and town ways, shall be laid out and expended for that purpose, before the first day of July next after the same shall have been granted. *Ib.* § 10.

But by the statutes of 1847, ch. 254, this provision is so far repealed that any town, at a legal meeting called for that purpose, may determine at what time or times the money wanted by such town, for repairing highways and town ways, shall be laid out and expended. Until such action has been had by a town, it must be governed in its expenditure by the foregoing note. *See St. of* 1847, *ch.* 254.

30. When any town shall, by vote, direct that a part of the money raised to be expended in labor and materials on the highways and town ways, shall be expended in the months of March or April, of the year succeeding that in which it is raised, the surveyors of highways chosen for the year in which such money is raised, are authorized and required to expend the same, according to the directions of such vote: *provided*, that if the same is thus directed to be expended after the surveyors of highways, for such succeeding year, are chosen and qualified, it shall be expended by the surveyors having such tax committed to them, under the direction of the surveyors of such succeeding year, having charge of the repairs of the highways and town ways in the district in which the same is to be thus expended. *St.* 1839, *ch.* 144.

31. The surveyor shall (except where highway taxes are collected, as provided in the twenty-fourth section,) give reasonable notice, as directed by the town, to each person in his list, of the sum he is assessed to the highways and town ways; and shall also give to the inhabitants,

within the limits of his district, who may be assessed as aforesaid, seven days' notice of the times and places he shall appoint, (extraordinary casualties excepted,) for providing materials and working on the highways and town ways; and each inhabitant shall have an opportunity to work thereon, in person or by his substitute, or with his oxen, horses, cart and plough, at the prices which the town shall affix to such labor, to the full amount of the sum, at which he is assessed; but if any person so assessed shall pay to the surveyor, in money, the sum assessed to him, the surveyor shall, according to his best judgment, carefully expend the sum so paid in repairing the said ways. *R. S. ch.* 25, § 11.

32. The surveyor, at the expiration of his term, shall render to the assessors a list of such persons, (if any,) as shall have neglected or refused to work out or otherwise pay their highway tax, when required by him, as provided in the preceding section; and such deficient sums shall be placed by the assessors in a distinct column, in the next assessment of a town tax upon such delinquents, and collected like other town taxes, and paid into the town treasury. *Ib.* § 12.

33. Whenever there shall be a deficiency, either of labor or money, in the amount appropriated for the repair of highways and town ways, within the limits of any surveyor, or when the said amount shall not have been furnished or paid to the surveyor, so that he is unable to make such repairs, he may employ any persons to make such repairs; and the persons so employed shall be paid therefor by the town; provided that the sum so expended, by any such surveyor, shall not exceed ten dollars. *Ib.* § 13.

His authority is to employ other persons to make such repairs. Those persons and not the surveyor may recover pay of the town for their labor. 9 *Met.* 522.

34. If any town shall neglect to vote a sufficient sum of

money, for the purpose of repairing the highways and town ways, or shall not otherwise effectually provide therefor, each of its surveyors, first having obtained the consent of the selectmen for that purpose, in writing, may employ any persons to repair the said highways and town ways, in their respective districts, so that the same shall be safe and convenient for travellers, at all seasons of the year, and the persons so employed shall be paid therefor by said town. *Ib.* § 14.

35. A surveyor of highways has no authority to repair a way at his own expense, and then to call upon the town for an indemnity; and where a surveyor, before his limits were assigned, without consulting the other surveyors, repaired a way, which upon the assignment did not come within his limits, it was held he was without remedy. 4 *Pick.* 149.

36. Every town may authorize their surveyors or any other person, to enter into contracts for making or repairing the highways or town ways within the same. *R. S. ch.* 25, § 15.

37. Every town may also empower their surveyors to collect all such taxes, as shall not be paid in labor or otherwise, within the time limited by law, or at such periods as may be agreed upon by the town; and for that purpose, the assessors shall deliver to them warrants of distress, which shall be in substance like the warrants prescribed by law for collecting other town taxes; or they may deliver a warrant for collecting the deficiency in any highway tax to the collector, who shall then proceed to collect the same, in like manner as other taxes are by law to be collected, and shall pay over the same to the respective surveyors, who shall be held to account with the selectmen for the expenditure thereof. *Ib.* § 16.

38. Every surveyor, who shall receive his tax bill, shall exhibit the same to the selectmen, on the first Monday of

July annually, and also at the expiration of the term for which he shall be appointed; and at those times, respectively, shall render an account of all moneys that have been expended by him on the highways and town ways; and if he shall, in any such case, be guilty of any neglect, he shall for each offence forfeit a sum not exceeding fifty dollars, to be recovered by the said treasurer, to the use of the town. *Ib.* § 19.

39. If any money shall remain unexpended in the hands of the surveyors, after the expiration of their office, they shall pay the same to the town treasurer. *Ib.* § 17.

40. If any surveyor shall neglect to pay over such sums to the said treasurer, upon demand, the treasurer may recover the same in an action for money had and received, with twenty per cent. in addition thereto, to the use of the town. *Ib.* § 18.

TOWN CLERK.

1. GENERAL DUTIES.

1. How chosen and qualified.
2. Town clerk *pro tempore* when chosen.
3. In case of death, &c. selectmen may appoint a clerk.
4. The clerk *pro tempore* to make a record of his own election.
5. To record all votes—
6. May make record of his own election.
7. When he received record.
8. To notify town officers of their election.
9. To administer oaths of office and make record of their administration.
10. Town clerks may administer oaths to appraisers, &c.
11. To preside in the choice of a moderator.
12. To file copies of physicians' and surgeons' licenses.
13. To record mortgages of personal property.
14. Foreclosure of mortgage, notice of to be filed in clerk's office.
15. Mortgages, where recorded.
16. Clerk shall record mortgages.
17. To enter notices of stray beasts and lost goods.
18. Persons taking up stray beasts to cause notice to be entered with clerk.
19. When beasts are taken up within two miles of agricultural Hall, Brighton.
20. Clerks may issue warrant to appraise the same.
21. Duties of town clerks in relation to elections and the selecting of jurors.
22. Town clerks to record lists of persons liable to be enrolled in the militia.

23. To make annual returns of the same to adjutant general.
24. To record doings of proprietors of meeting houses.
25. Fees of town clerks.
26. Same subject.

1. The town clerk, as he records the votes of the meeting at which he is chosen, is usually elected immediately after the choice of moderator. He is chosen by ballot and immediately sworn to the faithful discharge of the duties of office by the moderator or by a justice of the peace. *R. S. ch.* § 33.

2. Whenever at any town meeting there shall be a vacancy in the office of town clerk, or the said clerk shall not be present, the selectmen shall call upon the qualified voters present to elect a town clerk pro tempore, in like manner as town clerks are by law chosen; and the selectmen shall sort and count the votes, and declare the election of such clerk, who shall be under oath to discharge all the duties of said office at such meeting; and he shall be subject to the like penalties for not discharging them, as town clerks are in the like cases. *Ib.* § 49.

3. Whenever any other duties, than those mentioned in the preceding section, shall be required to be performed by the town clerk, and, by reason of death, removal, sickness, or other cause, there shall be a vacancy in such office, or such clerk shall be prevented from performing the duties thereof, the selectmen may appoint, in writing under their hands, a clerk for the performance of such duties, who shall be sworn to the faithful discharge of the same. *Ib.* § 50.

4. Every clerk, so elected or appointed pro tempore, shall immediately after entering upon the duties of his office, make a record of such election or appointment upon the town records. *Ib.* § 51.

5. The town clerk shall record all votes, passed at the meeting, at which he shall have been elected, and at the other meetings held during his continuance in office. *Ib.* § 44.

6. It is competent to one chosen town clerk to make a record of his own election and qualification. 13 *Pick.* 305.

7. A town clerk may amend a record during his continuance in office.

He may also amend after elections have intervened, if at the time he amends, he be in office and amend only what was done by him when in the same office before. 11 *Mass.* 477.

But one who is no longer in office cannot amend a record made by him when town clerk. 13 *Pick.* 229.

8. After the election or appointment of any town officers, who are required to take an oath of office, the town clerk shall forthwith make out a list, containing the names of all such officers, as shall not have been sworn by the moderator, and a designation of the offices to which they are chosen, and deliver the same, with his warrant, to a constable, requiring him, within three days, to summon each of the officers, so chosen, to appear and take the oath of office, before the town clerk, within seven days after such notice; and the constable shall, within seven days, make return of the warrant to the town clerk. *R. S. ch.* 15, § 48.

9. The town clerk shall administer the oaths of office to all town officers, who shall appear before him for that purpose, and he shall make a record thereof, and also of all who shall file certificates of their having been so sworn before any justice of the peace. *Ib.* § 45.

10. In case there shall be no justice of the peace in the same town, the town clerk may administer the necessary oaths to any persons appointed by the judge of probate to appraise or divide any real estate, to set off dower, or to perform any other service respecting the property of persons deceased, a certificate of which oaths shall be returned into the probate office from which the commission or warrant issued. *Ib.* § 48.

11. During the election of a moderator, the town clerk shall preside, and shall have all the powers and perform all the duties of a moderator. *Ib.* § 27.

12. Every person, who has been licensed to practice physic or surgery, since the year one thousand eight hundred and eighteen, or who shall hereafter be so licensed, shall deposite a copy of his license with the clerk of the town, in which such licentiate may reside; and the said clerk shall file in his office such copy, attested by him with his certificate thereon of the time when the same was deposited; for which he shall receive from the licentiate the sum of fifty cents. *R. S. ch.* 22, § 8.

13. No mortgage of personal property, hereafter made, shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee, or unless the mortgage be recorded by the clerk of the town where the mortgagor resides. *R. S. ch.* 74, § 5.

14. In all mortgages of personal property, the right of the mortgagor or his assigns to such property, shall not be forfeited until sixty days after the mortgagee or his assigns shall have given written notice to the mortgagor or the person in possession of said property, claiming the same, of his or their intention to foreclose said mortgage, for a breach of the condition thereof, and caused a copy of the same notice to be recorded in the town clerk's office, where the mortgage is recorded. *St. of* 1843, *ch.* 72, § 1.

15. Every mortgage of personal property, whenever the mortgagor shall retain the possession thereof, shall be recorded as well by the clerk of the town in which he principally transacts his business, or follows his trade or calling. *Ib.* § 2.

16. The said clerk, upon payment of his fees, shall record all such mortgages of personal property, that shall be delivered to him, in a book to be kept for that purpose, no-

ting in said book, and also on the mortgage, the time when the same is received; and every such mortgage shall be considered as recorded, at the time when it is left for that purpose in the clerk's office. *R. S. ch.* 74, § 7.

17. When any person shall find any lost money or lost goods, of the value of three dollars or more, the owner whereof is unknown, he shall, within two days, cause notice thereof to be posted up, in two public places within the town where the same were found, and shall, moreover, within seven days, give notice thereof, in writing, to the clerk of the town, and pay him twenty-five cents for making an entry thereof in a book to be kept for that purpose; and if the money or goods so found be of the value of ten dollars or more, the finder shall, within one month after such finding, cause the same to be advertised in some newspaper, or to be publicly cried, if there be any town crier in the town, and notice thereof to be posted up in like manner, in two adjoining towns. *R. S. ch.* 56, § 1.

18. Every person who shall take up any stray beast, shall cause a notice thereof to be entered with the town clerk, in a book kept for that purpose, containing a description of the color, and of the marks, natural and artificial, of the beast, and cause the same to be cried, and notifications thereof, containing a like description of the beasts, to be posted up, in a manner provided in the preceding paragraph, otherwise he shall not be entitled to compensation for any expenses, which he may incur in relation thereto. *Ib.* § 2.

19. If any such stray beast shall be taken up within ten miles of the Agricultural Hall in the town of Brighton, the finder shall, within ten days after the beasts are taken up, in addition to the notice before required, post up a similar notice in Brighton, at such public place, as shall have been designated for such notices by the selectmen of that town; and the finder shall be entitled to receive therefor fifty cents,

together with eight cents for every mile that he shall travel for that purpose. *Ib.* § 3.

20. Every finder of lost goods or stray beasts, of the value of ten dollars or more, shall also, within two months, and before any use of said goods or beasts shall be made, procure from the town clerk, or from a justice of the peace, a warrant directed to two disinterested persons, to be appointed by the clerk or justice, and returnable into the town clerk's office, in seven days from the date, to appraise at their true value the goods or stray beasts, upon oath; which oath shall be administered by the clerk or justice. *Ib.* § 4.

21. For the duties of town clerks in relation to elections and selecting jurors, see titles, "Elections," and "Duties of Selectmen as to Jurors."

22. The assessors shall annually make out a roll or list of all the names of persons liable to be enrolled in the militia, and place it in the hands of the clerk of every city or town in the Commonwealth; and it shall be the duty of every such clerk to record such roll, or list of names, in the book of record of every such city or town within this Commonwealth. *St.* 1840, *ch.* 92, § 3.

23. Annual returns of the militia, thus enrolled, shall be transmitted to the adjutant general, in the month of May or June, by the clerks aforesaid. *Ib.* § 4.

24. When the proprietors of meeting houses, shall have organized agreeably to the provisions contained in St. 1840, ch. 62, the clerk of such corporation shall within ten days of such organization leave with the clerk of the town or city in which such church, meeting house or other house of public worship is situated, or is about to be built, a true copy, attested by the clerk of said corporation, of the record of the proceedings had at such organization; and the same shall be recorded in a book kept for that purpose, by such town or city clerk, who shall receive the same fees

as the register of deeds for the like services. *St.* 1840, *ch.* 62, § 4. *See* § 26.

25. For publishing the banns of matrimony, recording the same, giving a certificate thereof, and recording the marriage, upon receiving the minister's or justice's certificate thereof, fifty cents, to be paid on delivering the certificate of publishing the banns. *R. S. ch.* 122, § 11.

For recording births and deaths, eight cents each, or a certificate of a birth or death, ten cents. *Ib.* § 12.

For copies of town records and other documents, furnished to any person at his request, if containing less than one page, ten cents, and if containing more, at the rate of twelve cents a page. *Ib.*

A page, when the measure of computation for fees, means two hundred and twenty-four words. *Ib.* § 22.

26. For entering and recording a mortgage, and certifying the same on the original, seventeen cents, and if it contains more than one page, at the rate of fourteen cents, for every page after the first; the said fees to be paid, when the instrument is left to be recorded. *Ib.* § 15.

For all copies, at the rate of fourteen cents a page. *Ib.*

For entering in the margin a discharge of a mortgage, twelve cents. *Ib.*

For administering oath to appraiser, appointed by probate court, whether to one or more persons at the same time, twenty cents. *Ib.* §§ 1 & 21.

For entry of lost goods or stray beasts, twenty-five cents. *R. S. ch.* 56, § 1.

For warrant in such case, twenty cents. *R. S. ch.* 122, § 1.

II. DUTIES OF TOWN CLERKS UNDER THE LAWS RELATING TO MARRIAGES.

1. Intention of marriage to be entered with the town clerk.
2. How to be published.
3. Certificate of publication, when, and for what purpose given.
4. If the banns are forbidden, the

certificate to be withheld, and the objections to be submitted to two justices of the peace.
5. Who shall hear and determine the case, and certify their decision to the clerk.
6. The clerk shall conform to the certificate, if any, of the justices.
7. If the decision is against the marriage, the parties may appeal.
8. Penalty for defacing, &c., any notice of an intention of marriage.

1. All persons, intending to be joined in marriage, shall cause notice of their intention to be entered, fourteen days at least before their marriage, in the office of the clerk of the town in which they may respectively dwell, (if within this State;) and if there be no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town. *R. S. ch.* 75, § 7.

2. The intention shall be published by the clerk, with whom the entry is made, either by posting up a written notice thereof, in some public place in the town of which he is the clerk, fourteen days at least before the marriage, or by making a public proclamation thereof, at three public religious meetings in the town, on different days; the said meetings to be not less than three days distant from each other, exclusive of the days of the publication. *Ib.* § 8.

3. The clerk shall deliver to the parties a certificate, under his hand, specifying the time when notice of the intention of marriage was entered with him, and the time of the publication thereof; which certificate shall be delivered to the magistrate or minister, in whose presence the marriage is to be contracted, before he shall proceed to solemnize the same. *Ib.* § 9.

4. After the intention of marriage is entered with the clerk, if any person shall forbid the banns, and shall assign his reasons therefor in writing, and leave the same with the clerk, the certificate shall not be issued, until the matter shall have been duly inquired into and determined, in the manner hereinafter mentioned; provided the person forbidding the banns shall apply to two justices of the peace and of the quorum, of the same county, and shall,

within seven days after the filing of his reasons, procure their decision thereon, or produce to the clerk their certificate that a further time is necessary for the consideration thereof; in which case the clerk shall withhold his certificate, until the expiration of such further time, unless the justices shall sooner make known their decision. *Ib.* § 10.

5. The two justices so applied to, shall proceed forthwith to give notice thereof to the persons who propose to be married, and after a full hearing of the parties, or of the person objecting to the marriage, if the others do not appear, the justices shall decide on the truth and sufficiency of the reasons assigned for forbidding the banns, and shall certify their decision thereon to the clerk, with whom the intention of marriage was entered. *Ib.* § 11.

6. If the said two justices shall certify that the objections to marriage are true and sufficient, the clerk shall not issue any certificate of the publication of the banns; but if they shall certify that the objections are not proved, or are not sufficient, or if they shall not agree in a determination thereupon, the clerk shall forthwith issue his certificate, in the same manner as if no objection had been made thereto. *Ib.* § 12.

7. If the said justices shall certify that the objections to the marriage are true and sufficient, the persons, who propose to be married, or either of them, may appeal from such decision to the court of common pleas, or the supreme judicial court, next to be held for the same county, and the determination of the court thereon shall be final in the case; and the clerk of the town shall issue, or withhold, his certificate of the publication of the banns, according to such final determination. *Ib.* § 13.

8. If any person shall wilfully deface or take down any written notice of the intention of marriage, posted up as before prescribed, within fourteen days after it is so posted

up, he shall, upon conviction thereof, forfeit a sum not less than two, or more than twenty dollars, to the use of the person who shall prosecute therefor. *Ib.* 21.

In relation to the returns of marriages see title "Duties of Town Clerks as to Returns of Births, Marriages and Deaths."

III. DUTIES OF TOWN CLERKS AS TO RETURNS OF BIRTHS, MARRIAGES AND DEATHS.

1. Town clerks to record all births and deaths in his town.
2. To make annual returns to the secretary of commonwealth.
3. Births, how to be recorded, and what particulars.
4. Marriages, how to be recorded, and what particulars.
5. Deaths, how to be recorded, and what particulars.
6. School committees to make annual returns of births to town and city clerks.
7. Persons solemnizing marriages to keep a record thereof, and to make returns, monthly, to town and city clerks.
8. Superintendents of burial grounds, to make returns of burials monthly, to town and city clerks.
9. Parents and others to give notice of births and deaths.
10. Fees.
11. Town clerks to distribute blanks.
12. Secretary of commonwealth to furnish books and blanks.
13. Penalty on clerks for neglect.

1. The town clerk shall keep a record of the births and deaths of all persons within his town, and coming to his knowledge. *R. S. ch.* 15, § 46.

2. The clerks of the several cities and towns in this Commonwealth shall, annually, in the month of June, transmit to the secretary of the Commonwealth a certified copy of their record of births, marriages and deaths, which have occurred within their respective cities and towns during the year next preceding the first day of said month. *St.* 1844, *ch.* 159, § 1.

3. The births shall be numbered and recorded in the order in which they are received by the clerk. The record of births shall state in separate columns the date of the birth, the place of birth, the name of the child, (if it have any,) the sex of the child, name and surname of one or

both of the parents, occupation of the father, residence of the parents, and the time when the record was made. *Ib.*

4. The marriages shall be numbered and recorded in the order in which they are received by the clerk. The record of marriages shall state in separate columns, the date of the marriage, the place of the marriage, the name, residence and official station of the person by whom married, the names and surnames of the parties, the residence of each, the age of each, (whether single or widowed,) the occupation, names of the parents, and the time when the record was made. *Ib.*

5. The deaths shall be numbered and recorded in the order in which they are received by the clerk. The record of deaths shall state in separate columns the date of the death, the name and surname of the deceased, the sex, condition, (whether single or married,) age, occupation, place of death, place of birth, names of the parents, disease or causes of death, and the time when the record was made. *Ib.*

6. The school committee of each city or town shall, annually in the month of May, ascertain from actual inquiry or otherwise, all the births which have happened within such city or town, during the year next preceding the first day of said May, together with the facts concerning births required by the third section of this title, and shall make an accurate return thereof to the clerk of such city or town, on or before the last day of said May; and the said school committee, or other person authorized by them to make such returns, shall be entitled to receive from the treasury of such city or town, five cents for each and every birth so returned. *Ib.* § 2.

7. Every justice, minister and clerk, or keeper of the records of the meeting wherein any marriage, among the Friends or Quakers shall be solemnized, shall make a record of each marriage solemnized before him, together with

all the facts relating to marriages required by the fourth section of this title ; and each such justice, minister, clerk, or keeper shall, between the first and tenth days of each month, return a copy of the record for the month next preceding, to the clerk of the city or town in which the marriage was solemnized : and every person as aforesaid, who shall neglect to make the returns required by this section, shall be liable to the penalty of a sum not less than twenty or more than one hundred dollars. *Ib.* § 3.

8. Each sexton or other person, having the charge of any burial ground in this Commonwealth, shall, on or before the tenth day of each month, make returns of all the facts required by the fifth section of this title connected with the death of any person whose burial he may have superintended during the month next preceding, to the clerk of the city or town in which such deceased person resided at the time of his death ; and such sexton or other person, shall be entitled to receive from the treasury of the city or town to which the return is made five cents, for the return of each death, made agreeably to the provisions of this title. *Ib.* § 4.

9. Parents shall give notice to the clerk of their town of all the births and deaths of their children ; and every house-holder shall give the like notice of every birth and death happening in his house ; and the eldest person next of kin shall give such notice of the death of his kindred ; and the keeper of any alms house, work house, house of correction, prison or hospital, and the master or other commanding officer of any ship shall give the like notice of every birth and death, happening among the persons, under his charge ; and every person neglecting to give such notice for the space of six months after the birth or death shall have happened, shall forfeit to the use of the town a sum not exceeding five dollars. *R. S. ch.* 15, § 47.

10. The clerk of each city or town shall be entitled to

receive from the treasury of such city or town, eight cents for the record of each birth and death; *provided*, such clerk shall comply with the provisions of this title in all respects. *St.* 1844, *ch.* 159, § 5.

11. It shall be the duty of the clerks of the several cities and towns, to make such distribution of blank forms of returns as shall be designated by the secretary of the Commonwealth. *Ib.* § 6.

12. The secretary of the Commonwealth shall prepare and furnish to the clerks of the several cities and towns in this Commonwealth, blank books of suitable quality and size, to be used as books of records, according to the provisions of this title, and also blank forms of returns, as herein before specified, and shall accompany the same with such instructions and explanations as may be necessary and useful. *Ib.* § 7.

13. Any clerk who shall neglect to comply with the requirements of this act, shall be liable to a penalty of ten dollars, to be recovered for the use of any city or town where such neglect shall be proved to have existed. *Ib.* § 8.

TOWN TREASURER.

1. How chosen and qualified.
2. When may be appointed by selectmen.
3. To take charge of money belonging to the town and to give bond.
4. Town treasurers may sue on bonds, notes, &c. given to them or their predecessors.
5. To prosecute for trespasses on public property.
6. To prosecute for all forfeitures where other provision is not made.
7. To render his account annually.
8. The inhabitants may appoint their treasurer collector.
9. Treasurers to make return to legislature of moneys received from alien passengers:—penalty for neglect.
10. Duties of treasurer as to enginemen.
11. Duties of treasurer as to the militia.
12. Duties of treasurer as to weights and measures.
13. Duties of treasurer as to hawkers, &c.
14. Compensation of treasurer.

1. The town treasurer is to be chosen by ballot at the annual meeting, and is to be sworn to the faithful discharge of the duties of his office. *R. S. ch.* 15, §§ 33, 34.

2. Whenever the office of town treasurer in any town in this Commonwealth, shall be vacant by reason of death, removal, sickness, or other cause, or whenever such treasurer shall be prevented from performing the duties of his office, the selectmen of such town may appoint in writing under their hands a town treasurer pro tempore, who shall hold his office until another is chosen in his place, and shall be sworn and give bonds for the faithful discharge of the duties of his office, in the same manner as town treasurers are now required to do. *St.* 1838, *ch.* 43, § 1.

3. The town treasurer shall receive and take charge of all sums of money belonging to his town; and pay over and account for the same, according to the order of such town, or the officers thereof duly authorized in that behalf; and he shall give bond, in such sum as the selectmen shall require, with sureties to their satisfaction, for the faithful discharge of the duties of his office. *R. S. ch.* 15, § 58.

4. The treasurers of towns may, in their own names and official capacities, prosecute any suits upon bonds, notes, or other securities, given to them or to their predecessors in office. *Ib.* § 59.

5. The treasurers of towns shall prosecute for trespasses, committed on any public building or enclosure, belonging to their towns; and when any public building is owned partly by the town and partly by the county, such prosecution may be instituted, either by the treasurer of the town or of the county, whichever shall first prosecute therefor. *Ib.* § 62.

6. The treasurers of towns, in all cases, where no other provision is specially made, shall prosecute for all fines and forfeitures, which may enure to the use of their towns, or of the poor thereof. *Ib.* § 63.

7. Every town treasurer shall annually render a true account of all his receipts and payments, and other official doings, to the town. *Ib.* § 64.

8. The inhabitants of any town may appoint their treasurer collector of taxes. *Ib.* § 60. *See titles "Collectors" and "Collection of Taxes."*

9. The treasurer of every town and city shall, in the month of January, annually, make a return to the legislature of all moneys, received from alien passengers under the provisions of St. 1837, ch. 238, and paid into the treasury of such town or city, showing all receipts and expenditures during the preceding year; and every treasurer of any city or town, who shall neglect to make such return, shall, for every offence, forfeit to the Commonwealth a sum not exceeding five hundred dollars, to be recovered in an action of the case to be prosecuted by the treasurer of the Commonwealth. *St.* 1840, *ch.* 96, § 1. *See title "Duties of Selectmen as to alien Passengers."*

10. The duties of the town treasurer with respect to enginemen may be found under the first part of the title "Fire Department." *Ante, page* 130.

11. The duties of the town treasurer as to the militia may be found under the title "Duties of selectmen as to the Militia." *Ante, page* 276.

12. Duties of the town treasurer as to weights and measures may be found under the title, "Weights and Measures."

13. The duties of treasurer under the act, licensing Hawkers and Pedlers may be found under title "Duties of selectmen concerning Hawkers and Pedlers."

14. The compensation of the town treasurer for his services, shall be determined by the town. *R. S. ch.* 15, § 65.

WEIGHTS, MEASURES, AND BALANCES.

1. Weights, measures, and balances, received from the government of the U S., to be the sole standards, and to be kept in the custody of the treasurer of the Commonwealth.
2. What such weights, measures, balances are.
3. Seals to be used by the sealers of weights and measures.
4. Fees of sealers.
5. Sealers to give notice aunually, to all persons using weights, &c. for the purpose of buying or selling, to have the same examined, adjusted, and sealed; penalties for selling by unsealed weights, &c.
6. Trial, adjustment, and sealing of hay-scales and platform balances; and penalties for using same, without being tried, &c. Sealers not to carry standards from one place to another, &c.
7. Trial, &c. of county, town, and city standards, and penalties for neglect.
8. What standards to be kept by the treasurers of counties and towns; and how be made.
9. Sealers in towns, to be appointed by selectmen.
10. Selectmen may remove sealers and fill vacancies.
11. Each town sealer to have a set of standards.
12. Sealers accountable to towns for preservation of standards.
13. "Hundred weight," to be construed the net hundred.
14. Public weighers, to weigh according to the preceding section.
15. Who shall be deemed a public weigher; his duty in weighing, and penalty for breach thereof.
16. Salt, Indian corn, wheat, &c. to be sold by weight, except, &c.

1. The several avoirdupois and troy weights and balances, procured from the government of the United States for this Commonwealth, by the commissioners appointed for that purpose, in the year one thousand eight hundred and thirty-five, and also all weights, measures, and balances that have since been received from the said government, for the purpose of being used as standards, shall hereafter be used as the sole authorized public standard of weights and measures of the Commonwealth, and shall be in the care and custody of the treasurer of the Commonwealth. *St. of* 1847. *c.* 242, § 1.

2. The said balances, weights, and measures, shall be preserved by the treasurer, and used as public standards, and are as follows, namely: one half-bushel, one wine gallon, one wine quart, one wine pint, one wine half pint, one yard measure; also, a set of avordupois weights, consisting of fifty, twenty-five, twenty, ten, five, four, three, two, one pounds, and from eight ounces down to one dram; *also, one* set of troy weights, from five thousand penny-

weights down to half a grain, and from one pound down to the ten thousandth part of an ounce : and three sets of balances. *Ib.* § 2.

3. The seals, used by the various sealers of weights and measures, shall hereafter be as follows, to wit : by the treasurer of the Commonwealth, and his deputy, the letters C. M. ; by the county treasurers, the initial and final letters of their respective counties, followed by the letters Co. ; by town and city sealers, the name of their respective towns and cities, or such intelligible abbreviation thereof as the selectmen of the towns, or the mayor and aldermen of cities, may prescribe. *Ib.* § 3.

4. Each sealer of weights and measures, including the state deputy and county treasurer, shall receive a fee of three cents for every weight, measure, scale, beam, or balance, by him sealed, except platform-balances ; and a reasonable compensation for all repairs, alterations, and adjustments thereof, which may be necessary for him to make. *Ib.* § 4.

5. Every sealer of weights and measures shall, in the month of May, annually, give public notice by advertisement in some newspaper, or posting up notifications in different parts of the town, for every inhabitant of his town or city, who uses weights and measures for the purpose of buying or selling, and for public weighers who have the same, to bring in their measures, weights, balances, scales, and beams, to be examined, adjusted, and sealed, and he shall forthwith adjust and seal all weights and measures brought to him for that purpose. And every person who shall presume to sell by any other weights, measures, scales, beams, or balances, than those which have been sealed as before provided, or as provided in the following section, shall forfeit and pay a sum not exceeding twenty dollars for every such offence ; one half to enure to the use of the town or city, the other to the complainant. *Ib.* § 5. *R. S. c.* 30, § 16.

6. The sealers of every town and city shall go, once in every year, to every hay-scale or platform-balance, which cannot be readily removed, and try, adjust, and seal the same, for which he shall be entitled to a fee of one dollar and fifty cents for every such scale or platform-balance, weighing five thousand pounds and upwards; and for every scale or platform-balance, weighing less than five thousand pounds, he shall be entitled to a fee of fifty cents; and all repairs and alterations, which it shall be necessary for him to make, shall be the subject of an additional charge. Any person using such scale or platform-balance, in buying or selling, that has not been so tried, adjusted, and sealed, at least once in every year, shall be subject to the same forfeiture as provided in the fifth section, to be appropriated in the manner therein provided. And no sealer of weights and measures, except for the purposes of this section, shall carry his standard of weights, measures, and scales, from one place to another, for the purpose of adjusting others within the town or city. *Ib.* § 6.

7. Every county treasurer shall, once at least in every ten years, at the expense of the county, have the county standards tried, adjusted, and sealed by the treasurer of the Commonwealth or his deputy; and every town and city sealer shall, once at least in five years, at the expense of the town or city, have the town or city standards tried, adjusted, and sealed by the treasurer of the county in which the sealer resides, or by the treasurer of the Commonwealth or his deputy. And every treasurer or sealer, who shall refuse or neglect to have their standards sealed as herein provided, shall forfeit, to the use of the Commonwealth, a sum not exceeding fifty dollars. *Ib.* § 7.

8. The treasurer of each county, and the treasurer of each town, shall keep, at the expense of such county, city, or town, respectively, a complete set of the said weights, measures, and balances, except the troy weight. Said

weights and measures shall be made of copper, cast brass, or cast iron; the weights of four pounds, and all under that weight, to be made of brass; the larger weights may be made of iron; and all to be turned and finished. The liquid and dry measures shall be made of durable thickness, and if made of brass or iron, shall be turned inside, and on the top edge or rim. The balances shall be made of brass, steel, or iron, and, in all cases, the edges and bearings shall be of hardened steel or agate. The dry measures to be made, in form and dimensions, to conform to the aforesaid standard; all to be proved, sealed, and marked, by said standard as aforesaid. *Ib.* § 8.

9. One or more suitable persons shall be annually appointed in each town, to be sealers of weights and measures for such town. *R. S. c.* 30, § 12

10. The selectmen may remove from office any sealer of weights and measures in their town, and may fill all vacancies occasioned by such removal or otherwise. *Ib.* § 13.

11. When any town shall vote to have more than one sealer of weights and measures, the treasurer of the town shall, at the expense thereof, procure and preserve the necessary additional seals, weights and measures before specified; so that each sealer in such town may have complete sets of the same. *Ib.* § 14.

12. Every sealer of weights and measures shall receive of the town treasurer the said town standards and seal, and shall give him a receipt therefor, expressing the condition in which the same may be; and he shall be accountable to the town for the due preservation of the same in the like condition, until he shall re-deliver them to the treasurer. *Ib.* § 15.

13. When any commodities shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois; and all contracts con-

cerning goods sold by weight shall be understood and construed accordingly. *Ib.* § 25.

14. Every public weigher of goods or commodities shall weigh the same, according to the provisions of the preceding section, and make his certificate accordingly. *Ib.* § 26.

15. Every public weigher, who shall offend against the provisions of the preceding section, shall, for every such, offence, forfeit to the use of the town a sum not exceeding ten dollars; and every weigher of goods or commodities, appointed by any town, and every weigher of goods or commodities, for hire or reward, shall be deemed and taken to be a public weigher, so far as relates to the provisions of this and the preceding section. *Ib.* § 27.

16. No person shall sell any salt, Indian corn, wheat, rye, buck-wheat, barley or oats, unless the quantity so sold be first weighed; and in order to ascertain the mean or true weight, the vender shall weigh ten measures at least in every hundred bushels sold, five measures at least in every fifty bushels sold, and two measures at least in every less quantity than fifty bushels sold; and a bushel of salt shall be deemed to be seventy pounds, a bushel of Indian corn or rye, fifty-six pounds, a bushel of barley or buck-wheat forty-six pounds, a bushel of oats thirty pounds, a bushel of wheat sixty pounds, as the standard weight and measure of the same in all purchases and sales thereof; and every person, offending against the provisions of this section, shall, for every bushel of such salt and grain so sold, and in the like proportion for any greater or less quantity, forfeit the sum of two dollars, to be recovered in an action on the case to the sole use of any person who shall first prosecute therefor; provided, that this section shall not be construed to extend to sales of any of the articles aforesaid, where the vender and purchaser shall appoint a third person to measure or ascertain the weight or quan-

tity of the same, or otherwise shall mutually agree thereon, nor to any sales of the articles aforesaid not exceeding ten bushels, where the purchaser shall not require the same to be weighed. *R. S. ch.* 28, § 199.

WORK HOUSES.

1. Towns may provide work houses—persons who may be committed thereto.
2. Directors, masters, &c., of work houses.
3. Overseers of poor to be directors, in case, &c.
4. Meetings of directors.
5. Towns may join in providing a work house in common.
6. Joint board of directors of such houses.
7. Each town to choose three of the directors.
8. If any town neglects to choose directors, the others to take the whole charge.
9. Quarterly and other meetings of the directors.
10. Board may choose moderator and clerk.
11. Board may make by-laws, &c.
12. Board may allow compensation to the master and assistants.
13. Compensation to master, &c., to be paid by the towns interested.
14. Remedy against towns neglecting to pay.
15. Towns not to send more than their proportion, in case.
16. Any town refusing to contribute to expenses, shall not use the work house.
17. Each town may furnish materials, &c., for the persons committed by its authority.
18. Masters to keep a register of persons committed, &c.
19. Controversies between the master and the overseers, how determined.
20. How persons duly committed may be discharged.
21. Persons committed, to be employed—discipline.
22. Provision respecting foreigners committed.
23. Profits and earnings, how to be appropriated.
24. Work houses may be discontinued.
25. Construction of this chapter.

1. Any town may erect or provide a work house, for the employment and support of the following description of persons, that is to say; all poor and indigent persons that are maintained by, or receive alms from the town; all persons, who, being able of body to work, and not having estate or means otherwise to maintain themselves, refuse or neglect to work; all persons, who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; and all such persons, as spend their time and property in

public houses, to the neglect of their proper business, or by otherwise misspending what they earn, to the impoverishment of themselves and their families, are likely to become chargeable to the town or to the Commonwealth. *R. S. ch.* 16, § 1.

2. Every town, which has provided, or shall provide, a work house, may, at their annual meeting, choose three, five, seven, or more directors of such work house, who shall have the inspection and government thereof, with power to appoint a master and all necessary assistants, for the more immediate care and superintendence of the persons received or employed therein. *Ib.* § 2.

3. In all towns, where such directors of the work house shall not be specially chosen, the overseers of the poor shall be the directors thereof. *Ib.* § 3.

4. The said directors, once in every month, and at other times, as occasion may require, shall hold meetings, for the purpose of determining the most eligible mode of discharging the duties of their office; and, at their monthly meetings, they may make all needful orders and regulations, for the house under their charge; and such orders and regulations shall be binding until the next town meeting, and shall be submitted to such meeting, for the consideration of the inhabitants, and if approved by them, the said orders shall remain in force until revoked by the town. *Ib.* § 4.

5. Any number of towns, that shall so agree, may, at their joint charge and for their common use, erect or provide a work house, for the purposes before mentioned in this chapter, and may purchase land for the use of such house. *Ib.* § 5.

6. The ordering, governing, and repairing of any work house, erected or provided at the joint expense of two or more towns, and the appointing of a master, and necessary assistants, as well as the power of removing them from

their respective offices and trusts for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall, from year to year, be specially chosen by the several towns, at their annual meeting. *Ib.* § 6.

7. Each of the towns, jointly interested in any work house, shall choose three members of the board of directors, provided for in the preceding section, unless all the towns so interested shall agree to choose a different number; and, in case of the death of any such director, or of his removal from the town for which he was chosen, the vacancy may be supplied by such town at any legal meeting. *Ib.* § 7.

8. If any of the towns, jointly interested in any work house, shall neglect to choose their directors for said board, the directors, chosen by the other towns interested therein, shall have the whole charge of said house. *Ib.* § 8.

9. There shall be stated quarterly meetings of said joint board of directors, on the first Tuesday of the months of January, April, July, and October, to be held at the work house under their charge, for the purpose of inspecting the management and directing the business thereof; and meetings of the board may be called at any other time, by the overseers of the poor of any town interested in such house; they giving notice of the time and occasion thereof to the other members of the board, in such manner as shall have been agreed upon, at any stated meeting thereof. *Ib.* § 9.

10. The said joint board of directors, when duly assembled, may choose a moderator; and, at their first general meeting, after their election, they shall appoint a clerk, who shall be sworn to the faithful discharge of his trust, and shall record all votes and orders of the said board. *Ib.* § 10.

11. The said joint board of directors, at any general quarterly meeting, provided one half at least of all the members are present, shall have authority to make all reasona-

ble orders and by-laws, not repugnant to the laws of the commonwealth, for the ordering and regulating the work house under their charge. *Ib.* § 11.

12. The said joint board of directors may also, at any such quarterly meeting, agree with the master and assistants, and order a suitable compensation for their services; but all other matters, relating to any such work house, may be acted upon at any other meeting duly notified, provided one third of the whole number of the board are present; the doings of such last mentioned meetings being subject, however, to be altered or revised at any general stated meeting. *Ib.* § 12.

13. The yearly compensation of the master and assistants in any work house, jointly provided as aforesaid, (in addition to the allowance hereafter provided in this chapter for their seivices,) and also the expense of keeping the house in repair, shall be paid by the several towns interested, in proportion to their state tax, at the time when the expense may have been incurred, or in such other proportion, as all the towns interested shall agree upon. *Ib.* § 13.

14. If any town shall refuse or neglect to advance or reimburse its proportion of the sums of money, mentioned in the preceding section, or of any other charges mentioned in this title, after the same shall have been adjusted by the joint board of directors, the same may be recovered of such delinquent town, in an action to be brought by any person, whom the said board shall in writing appoint for that purpose. *Ib.* § 14.

15. No greater number of persons, belonging to any town shall be received into a work house, jointly provided as aforesaid, than such town's proportion of such house, when the receiving of them will exclude or be inconvenient to such as belong to the other towns interested. *Ib.* § 15.

16. If any town, jointly interested in any work house,

shall refuse or neglect to provide its proportion of the necessary expenses of such house, or of the materials, implements, or other means of performing the work there required, according to its agreement, or to the directions of the said joint board of directors, such town shall be deprived of the privilege of sending any person thither, for so long time as it shall neglect or refuse to make such provision. *Ib.* § 16.

17. In addition to the proportion of expenses and other things, mentioned in the preceding section, to be furnished jointly by any towns, each of such towns may furnish such other materials, and implements and means of work, as the overseers of the poor of such town may choose, for the employment of any person committed to such house; and the master of the house shall receive such materials, implements and means of work, and keep them separate from those of the other towns, and shall be accountable to each town interested, as well for the cost, as for all profits and earnings, made by the labor of the persons committed to said house. *Ib.* § 17.

18. The master of each work house shall keep a register of the names of the persons committed, and of the towns to which they belong, with the time of their being received and discharged, and of their earnings respectively, to be submitted to the overseers of the poor of said towns, when they shall request it. *Ib.* § 18.

19. All controversies, between the masters of each work house and the overseers of the poor of any town, respecting the accounts or other official doings of the masters, shall be determined by the directors of the house, at their general or quarterly meeting. *Ib.* § 19.

20. No person duly committed to the work house shall, within the time for which he was committed, be discharged, except by the police court, or the justice who made the commitment, or by the directors of the house at their gen-

eral or quarterly meeting, or by the court of common pleas at any term held in the county where such house is, for good cause shown upon application for that purpose.* *Ib.* § 20.

21. Every person committed to any work house shall, if able to work, be kept diligently employed in labor during the term of his commitment; and in case he shall be idle and not perform such reasonable task, or stint, as may be assigned, or shall be stubborn and disorderly, shall be punished according to the orders and regulations established by the directors of such house. *Ib.* § 21.

22. When any foreigner, or other person not having his legal settlement in any town in this state, shall become idle or indigent, he may be committed to the work house provided for the use of such town, to be there employed, if able to labor, in the same manner, and subject to the same rules as the other persons there committed; and the master of said house shall keep a true account of the charge of supporting such person, and shall exhibit the same once in every year to the General Court for allowance and payment; credit being therein given for the amount of such person's earnings. *Ib.* § 22.

23. Of the profits and earnings from the work of persons committed to any work house, one third part shall be appropriated to the support of the master, in addition to such annual salary as the directors of the house may think fit to allow him; and the other two thirds, together with the stock remaining on hand, shall be disposed of as the overseers of the several towns shall think proper, either to the use of their towns, or of the persons committed, or their families. *Ib.* § 23.

24. Any work house may be discontinued or may be

*This provision, it is plain, does not refer to paupers, but to idlers, vagabonds, &c. committed to work houses by the courts or by justices of *the peace.*

appropriated to any other use, whenever the town or towns interested shall decide that it is expedient, and shall determine so to do. *Ib.* § 24.

25. Nothing contained in this title shall be construed to affect any powers and privileges, heretofore granted to any towns, or the overseers of the poor thereof, by an act specially relating to work houses erected in such towns. *Ib.* § 25.

APPENDIX .....FORMS.

ASSESSORS.

Notification to the inhabitants to bring in lists of their polls and estates.

The inhabitants of the town of W— are hereby notified to bring in to the subscribers, assessors of said W—, on any day from —— to —— true lists of their polls and of all their estates both real and personal (not exempted from taxation) of which they were possessed on the first of May instant.

A. B.
C. D.
E. F.
} Assessors of W—

W— May 2, 1837.

Rules for Assessing Taxes.

Affix against every person's name the number of his polls and also a correct and descriptive list of his taxable property. Cast six per cent. upon each man's property, and carry out the result in the columns marked "*reduced value.*" As there is no column for *income*, the value of *every person's* income should be added to his personal estate. Let these several columns be correctly footed, in order to ascertain the total amount of polls and estates in the town.

Of the Poll Taxes.

One sixth part of the whole sum to be raised by any tax should be set upon the polls, as near as can be done conveniently, unless it exceeds *one dollar and fifty cents*, upon an individual, in which case, that sum must be the poll tax, for city, town and county purposes, exclusive of the highway tax.

Add together the town grant and the county tax, and divide the sum by 6. The quotient will be the sum to be assessed upon the polls; divide this by the whole number of polls, and you have the tax upon each.

Of the Apportionment upon the Estates.

After subtracting the amount of the poll taxes from the gross amount of the money to be raised for the town and county, then apportion the balance upon the aggregate of property both real and personal, as contained in the totals of the columns marked "*reduced value.*"

EXAMPLE.

The town of W. appropriates $5000 to defray town charges, and their county tax is $1650. They have 1050 polls; and the gross amount of their valuation (including real, personal and income) is $2,500,000. Six per cent. upon this sum gives $150,000 as their reduced valuation.

1. What sum is to be assessed upon a poll? 2. How much upon a reduced dollar in the valuation? 3. What is the tax of L. L. who has one poll, $30,000 in real, and $3000 in personal estate?—

Answer to 1st question.

```
Town grant——5,000                                  $
County tax——1,650   1050)1108,33(1,05. { on each
                         1050          {  poll.
        6)6650                 ———
          )1108,33             5833
                               5250
                               ———
                                683
```

Answer to 2d question.

1050 polls at $1,05=$1102.50.

Deduct this sum from 6650. 1102.50=5547.50.

which is to be averaged upon the estates, thus:—

```
150,000 : 5547,50 : : 1 : 003,69 That is, 3 cents 6 mills
          450000                 [and nine tenths of a mill
          ———                                [upon a dollar.
          1047500
           900000
           ———
           1475000
           1350000
           ———
            125000
```

It will be perceived that the decimal might be pursued farther, but for practical purposes, we should assess 3 cents and 7 mills upon the dollar which produces a fraction over

the precise sum of $2.50. Thus $150,000×003,7 is= $5550.00.—

This fraction is called the overlaying, and it is usual to have it much larger. But in no case must it exceed 5 per cent. upon the tax.

Multiply each man's reduced valuation by 003,7 and you have his tax.

Answer to 3d question. What is the tax of L. L. ?— Real estate, $30,000 at 6 per cent. is=$1800.

Personal, 3,000 reduces to 180

3,7	3,7	
1260	12600	
540	5400	
6,66|0	$66,60|0	Real
	6.66	Personal
	1.05	Poll
	$74.31	Total of tax.

It is a more general method to form a scale or table as follows:—

	$ 10,000	$ 1000	$ 100	$ 10,0	$ 1,00	Cents 10
1	370,00	37,00	3,70	0,37	003,7	000,37
2	740	74,00	7,40	0,74	007,4	000,74
3	1110	111,00	11,10	1,10	011,1	001,14
4	1480	148,00	14,80	1,48	014,8	001,48
5	1850	185,00	18,50	1,85	018,5	001,85
6	2220	222,00	22,20	2,22	022,2	002,22
7	2590	259,00	25,90	2,59	025,9	002,59
8	2960	296,00	29,60	2,96	029,6	002,96
9	3330	333,00	33,30	3,33	033,3	003,33

To know L. L's tax on real,
we find $1000 pays 37.00
$800 29.60+66.60
on personal $100 3.70
$80 2.96 + 6.66
1 poll pays - - - - - - 1.05+$74.31.

PARISH TAXES.

The principle is precicely the same as in town taxes.

To the valuation should be added the amount of real estate owned by the parishioner, in every other town in the Commonwealth.

Warrant of Assessors to Collector.

W. ss. To A. B. Collector of the town of W. in in the county of W——, GREETING.

In the name of the Commonwealth of Massachusetts you are hereby required by us the subscribers, assessors of said town to levy and collect of the several persons named in the list herewith committed to you, and of each one his respective proportion therein set down of the sum total of such list, the sum of —— it being* this town's proportion of a tax of —— granted by the last general court of said Commonwealth for defraying the necessary charges and expenses of the county aforesaid, and a tax of —— voted and agreed upon by the town aforesaid at a meeting legally held for that purpose, on the —— day of —— last for defraying the necessary charges and expenses thereof; together with the sum of —— being the overlayings on said taxes, and also a further sum of —— for deficiencies in the highway taxes of the last year.

And you are to complete and make up an account of the collection of the whole sum, and transmit and pay over the same as follows—to wit—to A. C. Esq. treasurer of the county aforesaid, or his successor in that office, on or before the —— day of ——† next the sum of ——, to A. B. treasurer of said town or his successor in that office, on or before the —— day of —— next, the sum of ——.‡

And if any person shall refuse or neglect upon demand by you made to pay the sum he is assessed in said list, you are to distrain the goods of such person to the value thereof, and the goods so distrained to keep at the expense of the owner for the space of four days at the least, and to sell the same within seven days after the seizure by pub-

* If there are more collectors than one, say "a part of this town's proportion," &c.

† Insert the day mentioned in the warrant from the county commissioners.

‡ Should the collector be treasurer, he may be directed to deposit the sums collected for town taxes, or hold them subject to the order of selectmen.

lic auction for the payment of the tax and the charges of keeping and of the sale; first giving notice of such sale by posting up a notification thereof, in some public place in the town forty-eight hours at least before the sale. If the distress shall be sold for more than the tax and the charges of keeping the same and making the sale, you are to return the surplus to the owner on demand with an account in writing of the sale and charges. If any person shall refuse or neglect for fourteen days after demand thereof made to pay his tax, and you cannot find sufficient goods upon which it may be levied, besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, military arms, utensils for house-keeping necessary for upholding life, and bedding, and apparel necessary for himself and family, you are to take the body of such person and commit him to prison, there to remain until he shall pay the tax and charges of commitment, and imprisonment, or be otherwise discharged by order of law.

Given under our hands by virtue of a warrant from the Commissioners of the county aforesaid, and the vote of said town passed on the day aforesaid this —— day of —— in the year eighteen hundred and ——.

A. B.
C. D.
E. F. } Assessors of W—.

	$	cts.
County Tax	——	——
Town Tax	——	——
Overlaying	——	——
Highway deficiencies	——	——

The form of the tax list is given on page 45.

Certificate of the Assessment of County Tax to be returned to County Treasurer.

Pursuant to a warrant from the County Commissioners of Worcester County, dated the day of in the year 183 We have assessed the polls and estates of the inhabitants of the Town of the sum of and have committed lists thereof, to the Collector of said Town, viz:—to with warrant in due form of law, for collecting and paying in the same to

Treasurer of said County, or his successor in office, on or before the* day of next, ensuing.

In witness whereof, we have hereunto set our hands, at this day of in the year 183

A. B.
C. D. } *Assessors.*
E. F.

Certificate of Assessment of Taxes to Selectmen and Treasurer.

To the Town Treasurer and to the Selectmen of the town of S.

We have assessed upon the polls and estates of the town of S—— the sums following, which we have committed to S. H. Collector of said town, with a warrant for collecting the same in due form of law.

State Tax,		214:75	N. W. } *Assessors of*
County Tax,		144:14	L. R. } *the Town*
Town Grant,	3200:00		M. S. } *of S——.*
Overlaying upon all the Taxes,	94:90		
Highway deficiencies,	19:40		
		3314:30+	
		$3669:19	

S——, Sept. 1, 18 .

Warrant of parish assessors to parish collector.

W. *ss.* To A. B. Treasurer and Collector of taxes for the 2d parish of W. in said county, GREETING.

In the name of the Commonwealth of Massachusetts, you are required to levy and collect of the several persons named in the list herewith committed unto you, and of each one his respective proportion therein set down, of the sum total of such list, it being a tax of granted and agreed upon by said parish, at their meeting held for that purpose on the day of last by adjournment from the day of last, together with the sum of being the overlayings on said taxes, and you are to make up and complete an account of the whole of said sums and pay over the same to the assessors of said parish or their order on or before the day of next.

And if any person shall refuse or neglect to pay the sums so assessed, upon demand, you are to distrain the goods of such person to the value thereof, and the distress

* Insert the day in the warrant of the commissioners.

so taken to keep, for the space of four days at the least, at the cost and charge of the owner; and to sell the distress so taken within seven days from the time of taking the same, by public auction, for the payment thereof, and the charges of keeping, and of the sale; first giving notice of such sale by posting up a notification thereof in some public place in said town, forty-eight hours at least, before the sale; and if the distress shall be sold for more than the tax, and charges of keeping the distress and making the sale, you are to return the surplus to the owner upon demand, with an account in writing of the sale and charges.

And if any person shall refuse or neglect, for fourteen days after demand thereof made, to pay his tax, and you cannot find sufficient goods, upon which it may be levied, besides the tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house-keeping necessary for upholding life, and bedding and apparel necessary for himself and family, you are to take the body of such person, and him commit unto the common goal of the county aforesaid, there to remain until he pay the same, and charges of commitment, or be otherwise discharged by order of law.

Given under our hands by virtue of the vote of said parish, passed on the —— day of —— last, this —— day of —— in the year of our Lord one thousand eight hundred and

A. M.
E. C.
F. W. P.
} *Assessors of the ———parish in the town of W.*

Tax	$3500,00
Overlayings	174,21
	$3674,21

Commitment of the Highway tax to the Surveyor of Highways.

To A. B. one of the Surveyors of Highways of the town of W.

The following is the bill of the highway taxes of the persons against whose names they are set, and which you are directed to have expended in work and materials upon the highways, town ways and bridges within the limits assigned to you by the assessors or selectmen, as the case may be.

You are to give reasonable notice to each person herein named of the sum he is assessed to highways and town ways, and also seven days' notice of the times and places you may appoint for providing materials and working on said highways and town ways in your district.

You are to cause one half at least of said sums to be expended before the first day of July next. You are to exhibit this tax bill to the Selectmen on the first Monday of July and also at the expiration of your term of office, and at those times respectively to render an account of all moneys by you expended:—You will allow for work at the following rates—(*insert the provisions of the vote of the town.*)

HIGHWAY TAX.

	No of Polls.	Poll Tax.	Real.	Personal.	Total.
A. B.	1	0:55	9:70	5:40	16:65

Given under our hands this —— day of —— 183

M. T.
L. R.
M. S.
} *Assessors of W.*

Form of Warrant to accompany the list when the Highway Surveyors are authorised by towns to collect the Highway Taxes not worked out.

W. *ss.* To A. B. a Highway Surveyor of the town of S. in the county of W——, GREETING.

In the name of the Commonwealth of Massachusetts; you are required to collect of the several persons named in the list herewith committed to you, each one his respective proportion therein set down, of the sum of *dollars*, voted by the inhabitants of said town on the —— day of —— last, for repairing the highways, town ways and bridges in said town.

You first having given reasonable notice to each person herein named of the sum he is assessed to highways and town ways, and also seven days' notice of the times and places you may appoint for providing materials and working on the highways and town ways within the limits of the district assigned to you by the assessors (or selectmen) for the present year.

You are to allow the several persons for work and labor

according to the vote of the town as follows to wit: (insert the provisions of the vote of the town) you are to cause one half of said sum at least to be expended as aforesaid on or before the first day of July next.

And you are to exhibit this warrant, with your doings thereon, to the selectmen on the first Monday of July next, and also at the expiration of your term of office, and at those times respectively to render an account of all moneys by you expended on the highways and town ways. You are also to complete and make up an account of your collections of the whole sum on or before the —— day of ——. And if any person shall refuse or, &c. (the conclusion is the same from this point as the warrant to collectors.)

Given under our hands, this —— day of —— in the year ——

A. B.
C. D. } *Assessors of*
E. F. *S.*

Notice to be posted by Assessors of discount on taxes.

The assessors of the town of B. give notice that they have delivered to C. D. Collector of taxes, a correct list of the taxes, together with a warrant in due form of law for collecting the same, and that by a vote of the town, to all persons who shall voluntarily pay the collector at his office, a discount will be made on their taxes as follows:

To such as pay within 30 days, per cent.
within 60 days, per cent.
within 120 days, per cent.

B——, May——, 18—

J. S.
X. Y. } Assessors of the town of B——.
Z. Q.

Assignment of limits to Highway Surveyors.

To A. B. one of the Surveyors of Highways for the town of W.

The limits of the district, the highways, town ways and bridges which are to be kept in repair by you for the present year, are as follows, to wit, *(insert the bounds.)*

W , April , 18 .

A. B.
C. D. } Assessors of W——.
E. T.

AUCTIONEERS.

It is unnecessary here to insert any form of their appointment, and mode of keeping their accounts, as no correct accountant can mistake in this matter. For the forms of their bonds and returns to the state treasurer, blanks are furnished at the treasury office, and none others are received there.

Oath to be annexed to account.

I, A. B. do solemnly swear that the above account by me subscribed is true, that I have carefully examined all my entries and memorandums of sales by auction and otherwise, and that the said account exhibits the whole amount thereof which is liable by law to pay a tax.

A. B. Auctioneer.

W— *ss.* 18—. Personally appeared the above named A. B. and made oath to the above declaration by him subscribed. Before me, Justice of Peace.

COLLECTORS.

Form of Bond to be given by collector when he is also town treasurer.

Know all men by these presents, that we, A. B. of W. in the county of W. and Commonwealth of Massachusetts as principal, and C. D., E. F. of said W. as sureties, are holden and firmly bound to said town of——— or its certain attorney, in the sum of dollars, for the payment of which well and truly to be made, we bind ourselves and our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this—day of ———in the year———.

The condition of this obligation* is such that whereas the said A. B. has been chosen Treasurer and Collector of Taxes for said town of W. for the current year, and has accepted those offices and been duly sworn to the discharge of their respective duties, now if the said A. B. shall as treasurer and collector as aforesaid, faithfully collect, account for, and pay over all the taxes which he shall be legally required to collect, and also with diligence and fidelity discharge all the other legal duties of the aforesaid

*The condition of the above bond may easily be altered to suit the case of collector when not treasurer.

offices, then this obligation shall be void, otherwise it shall remain in full force and virtue. A. B. (L. S.)
Signed, sealed and delivered, C. D. (L. S.)
in presence of E. F. (L. S.)

Advertisement of Lands to be sold for the payment of Taxes.

The proprietors of the following tracts of land in the town of S. in the county of W. are notified that the same are taxed in the tax list committed to the subscriber, the collector of taxes for said town of S. for the year eighteen hundred and —— as follows,

John Doe—the dwelling-house occupied by him in the village of S. with about one acre of land—the store nearly opposite said house now occupied by H. and B. as a grocery store, with about an half acre of land. The amount of tax on the dwelling-house is six dollars and fifty cents, on the store four dollars and twenty-five cents.

*Richard Roe.

And if no person shall appear to discharge said taxes on or before the — day of —— next at — o'clock in the forenoon (or afternoon) I shall proceed to sell at ——, (*place of sale*) by public auction, so much of said respective tracts of land as shall be sufficient to discharge said taxes and all necessary intervening charges.

S. 184–. A. B. Collector of S.

Deed by a Collector of lands sold for taxes.

To all to whom these presents shall come: I, A. B. a collector of taxes for the town of C. in the county of W. and Commonwealth of Massachusetts, for the year one thousand eight hundred and legally chosen and sworn, send GREETING. Whereas the assessors of the town of C. aforesaid have assessed C. D. of F , the sum of for a tax as a proprietor of land in said C. in the list of assessments they have committed to me to collect, and whereas no person has appeared to discharge the said tax although on the —— day of —— last past, I demanded payment of the said tax of said C. D. the owner of said estate, and although I have advertised the said estate, three weeks successively in the W. P. a newspaper printed in the county aforesaid, and posted the same advertisement three weeks before the sale, on the premises, and in the

*As before.

following public places in said town of C. to wit: the Eagle Hotel kept by A. H. and the Post office.—Therefore know ye, that I the said A. B. collector of taxes as aforesaid, in consideration of the sum of———(said sum being the price for which the estate was sold,) to me paid for discharging the said taxes and necessary intervening charges, by G. H. of said C. in the county of W., do hereby give, grant, sell, and convey to the said G. H. and his heirs and assigns forever, the following described real estate, being a part of the lot taxed as aforesaid, viz. (*description*) the same having been struck off to the said G. H. the highest bidder therefor, at a public auction notified and held at the house of O. P. in said C. on the — day of ——. To have and to hold the same to the said G. H. and his heirs and assigns forever, to his and their use forever; subject however to the right of redemption of the owner thereof, or his heirs and assigns, at any time within two years from the time of sale as aforesaid. And I covenant with the said G. H. his heirs and assigns, that I gave notice of the intended sale of the said lands according to law, and that I have observed the directions of the law in all respects in the premises. In witness whereof I do hereunto set my hand and seal this —— day of —— in the year eighteen hundred and ——.

Signed sealed and delivered
in presence of A. B. (L. S.)

Form of Account to be made where Collector sells a distress taken for the payment of Taxes.

Account of the sale of a lot of Hay belonging to S. L. of S. taken, distrained, and sold by me, for the payment of his taxes, in the bills committed to me to collect, for the year ——.

25 cwt. Hay, sold to C. M. for			19,80
S. L.'s county, and town Tax.			
Poll, ...	1 49		
Real, ...	6 40		
Personal, ...	3 30	$11 19	
Charges,			
Travel, 5 miles, . . .	0 20		
Commissions, at 4 per ct.	0 44		
Carting the hay, . . .	1 75		
Weighing, ...	0 25		
Loading the hay, . . .	0 50		
Advertising and selling, .	0 50	3 69	15 88
Surplus money returned to S. L.			$3 92

S . 18—. B. F. *Collector of S.*

Certificate to be made upon the copy of a warrant to be given to the Keeper of a Prison, when a person is committed for Taxes.

P , 18—.

I hereby certify, that ——— is the sum which A. B. now committed to prison, is to pay, as his proportion of the assessment within mentioned, and that upon his having neglected payment for fourteen days, and for want of goods whereof to make distress, I have taken his body. The cost of taking and committing is ———

G. W. Collector.

Form of Return to be furnished by the Collector to the Selectmen to enable them to make a list of Voters.

The following is an accurate list of all persons from whom I have received a state or county tax since the date of my last return.

A. B.
C. D. &c. E. F. Collector.

CONSTABLES.

The manner of notifying Town Meetings or Parish Meetings must be such as the town or Parish may order. The proper mode is to post up attested copies of the Warrant, and to preserve the original, to be returned to the Town Meetings, or Parish Meeting.

Form of return on Warrant.

W ———, *ss. March*—, 18—.

I have served the within warrant by posting up attested copies of the same at each of the public meeting-houses in said town, fourteen days before the time of holding this meeting. M. B. Constable of W.

When any mode of notifying the meeting is prescribed by a town or parish a compliance with that mode should be stated in the return.

Notification to a person drawn as a Juryman.

E. *ss.* To A. B. of B.

You are hereby notified that on the day of instant, you was drawn to serve as a Juror, at the *Court of Common Pleas*, to be holden at S. within and for said county, on the day of , and you are notified to attend said Court on the day of its sitting, at o'clock.* M. B. Constable of A.

* Insert the day and hour stated in the venire.

Return on a venire for the appointment of Jurors.

Worcester, ss. I notified the Selectmen and Town Clerk of said Town of to meet as within directed, and draw a Traverse Juror, to serve at the Court within named; and on the
day of A. D. 183 , was drawn as such Juror; and on the
day of A. D. 183 , I summoned him to appear and attend the said Court accordingly.

Constable of said Town.

Fees, Service, $0 25
Travel, miles,

$

Constables will be particular to insert the *date*, in the blank returns, which should be the date of the *drawing* of the Jurors; and the time when they were notified is of no consequence in the above return, if it appears to have been done four days previous to the sitting of their Court.

The other duties of Constables, the forms of the returns, &c. being the same both in civil and criminal actions with those of Sheriffs, it has not been thought advisable to incumber this work with them.

ENGINEMEN.

Appointment.

The Selectmen of the town of B. hereby appoint A. B. C. D. E. F. &c. to be enginemen within said town, during the pleasure of the Selectmen, and they are to be attached to Engine No. 3.

Given under onr hands this day of 18

Selectmen of B——.

Certificate to the Militia Officers.

To Capt.

The Selectmen of the town of B. hereby certify that the following persons who reside within your company bounds, have been duly appointed by us this day as Enginemen, within said town, viz. A. B. C., &c.

Selectmen of B.

B. 18—.

FENCE VIEWERS.

Request of the owner of a lot of land to the Fence Viewers, to survey the fence between his land and an adjoining close.

To N. W. and J. P. two Fence Viewers of the town of S.

The fence between my land and that of R. H. in said S. is insufficient: this is to request you to survey the same, and to direct him to repair or rebuild it. I. G.

S. 18—.

Notice to the adverse party.

To R. H. of S.

I. G. of said S. has complained to us, two of the Fence Viewers of said town, duly chosen and sworn, that the fence between his lot and yours adjoining, in S. is insufficient, and has requested us to survey said fence, that you may be directed to repair the same. You are hereby notified that we shall proceed to the survey to-morrow at nine o'clock, A. M.

S. 18—.

N. W. } *Fence*
J. P. } *Viewers.*

Award of the Fence Viewers.

To R. H. of S.

Having surveyed the fence between your enclosure and that of I. G. in said S. which of right you ought to maintain, and having found said fence out of repair and insufficient—we hereby direct you to repair or rebuild said fence in —— days from the date hereof.

S. 18—. N. W. } *Fence Viewers of*
J. P. } *the Town of S.*

Appraisal of the said fence, built by the complainant, when the occupant of the adjoining lot has neglected to comply with the directions of the Fence Viewers.

The undersigned, two Fence Viewers of the town of S. duly chosen and sworn, having heretofore surveyed a certain fence, between the inclosure of I. G. and R. H. in said S. and after having adjudged the same to be insufficient and illegal, did order and direct that the said R. H. should repair or rebuild the same within days from the date of our order, and the said R. H. not having complied with said order the said I. G. at his own proper costs and charge has repaired and rebuilt the same—and we

now appraise the said fence at the sum of *dollars.*— And we certify that our fees for attending that service are as follows:—

For viewing said fence,
For appraising the same,
Paid us by the said I. G.

N. W.
J. P. } *Fence Viewers.*

S——, ——, 18 .

Notice of Fence Viewers on application of a party when the right of occupants in Partition Fence is in dispute.

To ———.

M. N. has represented to us the subscribers, two of the Fence Viewers of the town of P. duly chosen and sworn, that a controversy has arisen between him and you, respecting your several rights in the partition fence between your land and his, (*or* the land occupied by him and you, at *or*, from , to , *as the case may be,*) and has made application to us on that account; we do therefore hereby notify you, that we shall be at on the day of , at o'clock in the noon, to assign to each party his share of said fence, when and where you will attend if you think fit.

Dated, 18— J. B.
J. D.

Award of Fence Viewers in last case.

Whereas a controversy has arisen between A. B. of and C. D. of , about their respective rights in a partition fence in the line between their lands (or farms,) at , (or from to) we the suscribers, Fence Viewers of the town of F. duly chosen and sworn, having, on the application of the said A. B. (and after having given due notice to the said C. D.) viewed the premises and duly considered the matter in dispute, have assigned, and do hereby assign to each of the said parties his share of said fence, as follows, viz.

The said A. B. shall build and keep in repair, a good and sufficient fence from , or, from to And the said C. D shall build and keep in repair a like fence on the other part of said line, viz, from to . And each party is to erect (or repair,) his part of said fence within —— days from the date hereof.

Given under our hands at said F. this —— day of —— 18—.

J. B.
J. D.

Notice of Fence Viewers on application of a party whose land is divided from another's by a brook, river, pond, or creek.

To ——— of

M. N. of , has represented to us the subscribers, Fence Viewers of the town of F. that you refuse to join with him, (*or*, that you and he cannot agree, *as the case may be*) in making a partition fence between your land and his, (*or*, between the lands occupied by him and you, the same being bounded or divided by a pond, river, brook, or creek, *as the case may be*) and has therefore made application to us to view the same, and determine thereupon; we therefore hereby give you notice that we shall attend that service on the day of , at o'clock, when and where you will be present, if you see fit.

Dated the day of 18 .

J. B.
J. D.

Determination of Fence Viewers as to a Partition Fence on the lands of different persons, bounded or divided by a river, brook, pond, or creek.

It has been represented to us, the subscribers, two of the Fence Viewers of the town of F. duly chosen and sworn, by A. B. of , whose land is bounded or divided from the land of C. D. (*or*, occupied by C. D.) that the said C. D. hath refused to join with him , (*or*, that they could not agree in making a partition fence, *as the case may be*,) and the said A. B. having applied to us to view the same and determine thereupon, we have, after giving due notice to the said C. D. attended that service, and do determine, that the said pond, river, brook, or creek, does not answer the purpose of a sufficient fence, (*or as the case may be*) and that it is impracticable to fence at the boundary line, we therefore determine that said fence shall be set up as follows, viz. And that the said A. B. shall build and maintain , and the said C. D. shall build and maintain .

Given under our hands, this day of 18 .

J. B. }
J. D. } *Fence Viewers.*

Application to Fence Viewers, by a party owning land which had been improved in common with another occupant, for a division of the same.

To J. B. and J. D. two of the fence viewers of the town of F.

C. D. and myself, having heretofore improved our lands in common, I am desirous to have a partition fence between my lot at and that of C. D. (or now occupied by C. D.) and to improve my part in severalty, and he has refused, (or neglected) to divide the line where the fence ought to be built: I do therefore request that you would divide the same, and assign to each party his share thereof, according to law. A. B.

Dated , 18 .

Notice of Fence Viewers to a party, on the application of another with whom he had improved in common, and is desirous to improve in severalty.

To C. D. of

A. B. of F. has represented to us, the subscribers, Fence Viewers of said town of F. that he is desirous of having a partition fence between his land at , and yours, which you have hitherto improved in common, and to improve his part in severalty, and that you refuse (or neglect) to divide the line where such fence ought to be built, and hath therefore requested us to divide and assign the same. This is therefore to give you notice that we shall attend that service at , on the day of , at of the clock in the noon, when and where you may be present, if you see fit. J. B.

J. D.

Dated the day of 18 .

Fence Viewers' assignment of a Division Fence between two persons who had before improved their lands in common.

Whereas A. B. of F. hath represented to us, the subscribers, two of the Fence Viewers of said town, duly chosen and sworn, that he is desirous of improving in severalty, a certain parcel of land, [here describe the same] which he hath hitherto improved in common with , (a certain piece, &c. belonging to C. D.) and to have a partition fence between them, and that the said C. D. hath refused [or neglected] to divide the line where the fence ought to be built, and hath therefore requested us to divide

the same, and to assign to each party his share thereof, according to law.

We therefore, having given due notice to the said C. D. have divided and assigned the said line, as follows, viz :

The said A. B. shall build and maintain a fence on the line running from to .

And the said C. D. shall build and maintain a fence on the other part of said line, viz. from to . And the parties are to erect said fence in days from the date hereof.

Given under our hands this day of 18 .

J. B.

J. D.

Fence Viewers' appraisement of the value of a Partition Fence.

We the subscribers, Fence Viewers of the town of F. duly chosen and sworn, having been requested by A. B. to appraise his part of a partition fence, between his lands at , which have been under improvement, but which he now chooses to lay in common, and land of have viewed the same, and do determine the value of the same to be .

J. B.

J. D.

Dated day of 18 .

Agreement between two parties owning contiguous lots to divide the fence between them without the intervention of Fence Viewers.

This memorandum of an agreement made this day of in the year by and between T. H. B of S. on the one part, and D. F. M. of S. on the other part, WITNESSETH, That whereas there is a division fence needed on the line that divides the B. pasture of the said T. H. B. and N. lot of the said D. F. M. in said S. it is now agreed that the northerly half of said fence shall be erected and supported by said T. H. B. and the southerly half thereof by the said D. F. M. And this agreement being recorded in the office of the Town Clerk of the said town of S. shall be perpetually binding upon the several owners of the said lots, their heirs and assigns forever.

Witness our hands and seals, the day and year aforesaid.

Attest, T. H. B. (L. S.)

E. P. D. F. M. (L. S.)

FIELD DRIVERS AND IMPOUNDING.

Notice to be given when a beast impounded is taken up doing damage, and the owner is known.

S , May 18 .

To Mr. W. of F.

I have this day taken up and impounded, in the town pound, under the care of R. H. pound keeper, one white horse belonging to you, found doing damage in the inclosure of N. W. and for that cause said horse is impounded.

D. N. *Field Driver of the town of S.*

When taken up for running at large.

S , May 18 .

To Mr. W. of S.

I have this day taken up and impounded, in the town pound, under the care of R. H. pound keeper, one bay horse, belonging to you, found running at large, without a keeper, upon a public highway, within said town; and for that cause said horse is impounded. D. N. *Field Driver of S.*

Memorandum to be left with Pound Keeper.

To R. H. keeper of the town pound, in the town of S.

I have this day taken up and impounded, in the town pound under your care, one white horse, the property of W. F. of said S. found doing damage in the inclosure of N. W. The damage demanded is and charges of feeding .

D. N. *Field Driver.*

S , 18 .

If found at large, then say "found running at large without a keeper, upon the public highway, in said town."

Notice (in case the owner is unknown) to be posted up in some public places within the town, and in such adjoining towns as are within four miles.

Taken up this day, (doing damage in the inclosure of J. R.) and impounded in the town pound in P. one red Cow, with short horns, the owner of which is unknown.

A. B. *Field Driver.*

OVERSEERS OF THE POOR.

Notice from the town of T. where a person is in Distress to the town of S. where he is lawfully settled.

To the Overseers of the Poor of the town of S.

Gentlemen—S. R. and his wife, whose lawful settlement is in S. are now in this town, sick and in need of assistance. We have furnished them relief to the amount of *dollars*, which you are requested to pay, and to cause the removal of said paupers, as they are now the proper charge of your town. Yours, &c.

T—, 18 . } *Overseers of the Poor of the town of T.*

A denial of Settlement, in answer to the above.

To Overseers of the poor of the town of S.

Gentlemen—Your letter of the – instant respecting the support of S. R. and wife, was duly received. Upon inquiry, we are satisfied that this town is not the place of lawful settlement of the said S. R. and wife. We cannot therefore cause their removal, nor contribute towards their support.

Yours with respect,

S— 18— } *Overseers of the Poor of the town of S.*

Complaint to a Justice of the Peace, and application for the removal of a Poor Person not belonging to the Commonwealth, to another State, or to a place beyond the sea.

To R. B. Justice of the Peace within and for the county of W.

Complain B. T., P. W. and S. M. Overseers of the Poor of the town of , that they have been obliged to provide for the relief and support of one , a poor person now residing in said town, who has no lawful settlement within this Commonwealth, but belongs to , and that the said still stands in need of relief, and will be of further expense to said town. They therefore pray that a warrant may be issued for removing the said to the said , according to the provisions of the statutes.

Dated, &c.

B. T.
P. W.
S. M.

Complaint against the kindred of a pauper, to compel them to contribute towards his maintenance.

To the honorable the Justices of the C. C. Pleas, to be held, &c.

The inhabitants of the town of R. in the county of W. complain and inform the court, that A. B. of said R. laborer, is a poor and indigent person, and for a long time heretofore has been wholly supported by the said town of R. at their proper charge, the said town of R. being the place of lawful settlement of said A. B.; and that they have expended, for the support and maintenance of the said A. B. within six months last past, the sum of , as by the bill of particulars hereto annexed, appears.—And your Complainants would further inform this Court that C. B. and O. B. of S. in said county, yeomen, are kindred of said pauper, in the degree of children by consanguinity, being within the state, and of sufficient ability to support said A. B. or to contribute to his maintenance.

Wherefore your Complainants pray that this Court would assess and apportion the aforesaid sum of , expended by the said inhabitants of R. for the support of said A. B. to the time of exhibiting this complaint, upon the said C. B. and O. B. in such proportions as the court may adjudge reasonable, according to their several ability—together with the costs of this complaint.

And also that said court would assess and apportion upon the aforesaid C. B. and O. B. such further reasonable sum as may be expended for the support and maintenance of the said A. B. from the time aforesaid to the time of making said assessment.

And also that this court would further assess and apportion upon the said C. B. and O. B. such weekly sum as they shall judge sufficient for the future support of said pauper, to be paid quarterly to the inhabitants of the town of R. aforesaid, together with costs.

Dated at R. aforesaid, this day of , in the year of our Lord .

The inhabitants of the town of R. by

L. M. } Overseer of
N. O. } the poor of
P. Q. } said town.

Form of an Indenture for Overseers of the Poor to bind out the child of a poor person.

This indenture, made on the day of , by and between A. B. and C. Overseers of the Poor of the town of W. in the county of M. on the one part, and D. of said W. printer on the other part, WITNESSETH.

That the said overseers of the poor have bound and do hereby bind E. a minor son of F. a poor person, residing in said town, lawfully settled therein, and having become actually chargeable thereto, unto the said D. as an apprentice, to learn the art, trade, or calling of a printer, [or as servant, to be employed in any lawful work or labor,] and with him the said D. to serve from the day of the date hereof until the day of , when the said minor will be of the age of twenty-one years; during all which time the said apprentice [or servant] his said master shall faithfully serve.

And the said D. covenants, on his behalf, to teach and instruct, or cause the said apprentice [or servant] to be faithfully taught or instructed in the aforesaid trade or calling, and during all said term the said D. shall provide for said apprentice [or servant] suitable boarding, lodging, clothing, nursing, attendance, and other necessaries, for his comfortable support in sickness and health.

And the said D. shall also cause said minor to be taught to read, write and cypher *(insert such other provisions for the benefit of the minor as thought reasonable by overseers.)*

In witness whereof, the parties have hereunto set their hands and seals this day of in the year .

Signed, sealed and delivered, in presence of us,
E. F.
I. G.

A. (L. S.)
B. (L. S.)
C. (L. S.)
D. (L. S.)
} Overseers of the Poor.

Form of a certificate to accompany an account against the Commonwealth, for the support of a State Pauper.

Commonwealth of Massachusetts to the town of A. Dr.
To the amount paid for the support and maintenance of P. Q. a State Pauper, as by the bill of particulars annexed, $34,00

And the Overseers of the poor of the said town of A. certify that from the best information they can obtain, the said P. Q. was born in the province of Lower Canada, in

the year 1755, that he came into this Commonwealth in the year 1777, that he resided at R. in the county of W. where he bought a small dwelling-house, on the 1st April 1780, which he sold, January 10, 1786, when he left R. and resided in E. in the county of B. for seven years, without any estate of freehold. And that the said P. Q. has never gained a settlement in any other town within this Commonwealth; and that he has no kindred within the Commonwealth obliged by law to support him.

And we further certify, that no part of this account is for the support of any male person over twelve years of age, of competent health to labor.

Dated at A , this day of in the year 18 .

G. H. } *Overseers of the*
I. J. } *Poor of the town*
L. M. } *of A.*

SELECTMEN.

Form of posting up the list of Voters.

List of persons in the town of B. qualified to vote in elections, for State, county and town officers, and for Representatives to Congress, as made out by the Selectmen, the day of 18 .

A. B.
C. D.

The Selectmen give notice that they shall be in session for the purpose of correcting and revising the above list, at on *Saturday*, the day of next, from two o'clock to four o'clock P. M. And also for the space of one hour next preceding any town-meeting held for any of the elections aforesaid, throughout the year.

Selectmen of B——.

B——. 18 .

Warrant for calling the annual Town Meeting.

W. *ss.* To either of the constables of the town of W. in the county of W. GREETING.

In the name of the Commonwealth of Massachusetts, you are directed to notify the inhabitants of the town of W. qualified to vote in elections and in town affairs, to meet at the Town Hall in said W. on *Monday*, the day of

next, at o'clock in the forenoon, then and there to act on the following articles:—

1. To choose a moderator to preside in said meeting.
2. To choose all necessary town officers for the year ensuing.
3. To hear the annual report of the selectmen, and act thereon.
4. To raise such sums of money as may be necessary to defray town charges for the ensuing year, and make appropriations of the same.
5. To determine the manner of repairing the highways, townways, and bridges, the year ensuing.
6. To bring in their votes for a County Treasurer.
7. To——

And you are directed to serve this warrant, by posting up attested copies thereof, at each of the public meeting-houses in the said town, fourteen days at least before the time for holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands, this day of , in the year one thousand eight hundred and

A. B. }
C. D. } Selectmen of W—
E. F. }

Form of warrant for calling Town Meeting for voting for Governor, &c.

To either of the Constables, &c.

In the name of the Commonwealth of Massachusetts, you are required to notify and warn the inhabitants of the town of W. qualified to vote in elections, to meet at the Town Hall, in W. on *Monday* the day of November next, it being the second Monday of said month, at of the clock in noon, to bring in their votes to the Selectmen for a Governor and Lieutenant Governor of the Commonwealth, and for Senators, on one ballot, for the district of W. for the year ensuing.

And you are directed to serve this warrant, by posting up attested copies thereof, at each of the public meeting-houses in said town, fourteen days at least before the time for holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to ourselves, at the time and place of meeting as aforesaid.

Given under our hands this day of , in the year one thousand eight hundred and

W. E.)
J. W. L. } Selectmen of
O. C.) W.

If for the choice of a Representative to the General Court.

1. To determine the number of Representatives said town will choose for the present year.

2. To choose one or more Representatives to represent them in the General Court to be held at Boston, on the first Wednesday of January next.

If for the choice of a Representative to Congress.

To give in their votes for a Representative in the Congress of the United States, for the district.

Return of votes for Governor, &c.

At a legal meeting of the inhabitants of the town of in the county of and Commonwealth of Massachusetts, qualified by the constitution to vote for Governor and Lieutenant Governor, holden on the day of November, being the second Monday of said month, in the year one thousand eight hundred and for the purpose of giving in their votes for Governor and Lieutenant-Governor of said Commonwealth, the votes given in were sorted, counted, and recorded; and a public declaration thereof made, as is directed by the constitution; and were for the following persons.

For Governor, E. E. one hundred
M. M. one hundred

Attest A. B.)
C. D. } Selectmen.
E. F.)

L. M., Town Clerk.

☞ *The same form for return of votes for Lieutenant Governor, but the returns should be kept separate.*

Return of votes for Senators.

At a legal meeting of the inhabitants of the town of in the county of and Commonwealth of Massachusetts, qualified by the Constitution to vote for Senators, holden

on the day of November, it being the second Monday of said month, in the year one thousand eight hundred and for the purpose of giving in their votes for Senators for the district of the votes given in, were sorted, counted, recorded, and a public declaration thereof made, as by the Constitution is directed; and were for the following persons:—

C. A. Seventy-five
W. F. Seventy-five
C. R. Seventy-four

Attest A. B. }
C. D. } Selectmen.
E. F. }
L. M, Town Clerk.

For Certificate of the Election of Representatives to the General Court, see page 101.

Form for the return of Votes for Representatives to Congress.

At a legal meeting of the inhabitants of the town of in the county of and Commonwealth of Massachusetts, qualified as required by the Constitution to vote for Representatives in the General Court, holden on the day of November, being the second Monday of said month, in the year one thousand eight hundred and for the purpose of giving in their votes for a Representative of the said Commonwealth in the Congress of the United States, for the district; votes for the following persons were given in, sorted, counted, recorded, and declaration thereof made, as by law directed, to wit:—

For L. L. one hundred.
For M. L. F. one hundred.

A. B. }
C. D. } *Selectmen.*
E. F. }

Attest, L. M. Town Clerk.

Return of Votes for County Commissioners.

At a legal meeting of the inhabitants of the town of—— in the county of —— and Commonwealth of Massachusetts, qualified to vote in elections, holden on the —— of April in the year one thousand eight hundred and——, being the first Monday of said month, for the purpose of voting for County Commissioners for said county, the votes

given in were sorted, counted, recorded, and public declaration thereof made, and were for the following persons.—

For Commissioners, I. W. L. one hundred.
W. C. one hundred.
E. A. one hundred.

For Special Commissioners,
B. D. one hundred.
E. S. one hundred.

A. B.
C. D. } *Selectmen.*
E. F.

Attest, L. M. Town Clerk.

Form of posting Intemperate Spendthrifts.

The Selectmen of the town of C., having adjudged the following persons to be such as by excessive drinking so misspend, waste, and lessen their estate as to expose themselves and their families to want and the town to the expense of their maintenance (or who so habitually indulge themselves in the use of spirituous liquors as to injure their health or endanger its loss) hereby forbid all licensed innholders, common victuallers and retailers of said C. to sell them any spirituous or strong liquors for the space of one year.

A. M.
G. F.
L. D.

Given under our hands this —— day of —— in the year 184

A. B.
C. D. } Selectmen.
L. D.

Selectmen may issue a like prohibition to licensed persons of other towns to which spendthrifts resort for liquors.

Notice of Selectmen to perambulate Division Lines between Towns.

The Selectmen of the town of F. to the Selectmen of the town of P.

Gentlemen—The subscribers, Selectmen (or two of the Selectmen) of the town of F. being the most ancient of the said towns, hereby give notice, that we shall meet at , on the day of , at of the clock in the noon, to perambulate and run the lines between the

said towns, and renew the marks, according to the law of the Commonwealth: when and where, and for which service, you are hereby requested to attend.

Dated at said F. the day of in the year 18 .

J. N.
J. J.
W. W. } Selectmen of F.

Appointment of one to perambulate Lines between Towns.

To A. B. of———

We the subscribers, Selectmen of the town of F. by virtue of the law of the Commonwealth, do hereby nominate and appoint you to perambulate and run the dividing lines between said town and the town of F. and renew the marks; and you are to make returns of your proceedings into the Clerk's office of said town, as soon as you have completed this service.

Given under our hands this day of 18 .

} Selectmen of F.

Form of a license for an Auctioneer.

The Selectmen of the town of S. at a meeting this day held for that purpose, hereby license E. K. as an Auctioneer in said town for the year ensuing—he having given the bonds required by the laws of the Commonwealth.

Dated at B. this day of in the year 18 .

A. B.
C. D.
E. F. } Selectmen.

Form of an approval on the Bond of an Auctioneer.

The Selectmen of the town of B. certify that they have examined the within bond—that the sureties therein named are well known to them as persons of sufficient ability to respond the penalty thereof; and they hereby approve the same.

B———.

} Selectmen of

Form of Annual Return to be made by the Selectmen.

Report of the Selectmen, of the expenses of the town of S , for the year ending on the day of , 18 .

Paid for abatement of taxes,	$31 00
Assessors' wages,	78 70
Repairs of public buildings,	47 00
Inoculating for kine pox,	25 00
Support of Schools,	800 00
Support of Poor,	390 00
Recording births and deaths,	4 50
Perambulating town lines,	9 00
Collectors' Commissions,	37 00
Stationery,	4 50
Military equipments,	45 00
	1471 70
Paid towards a farm for support of poor,	1000 00
	$2471 70

The Selectmen further report that they have settled with the treasurer, and his account stands as follows:—

Dr. To balance on hand last year,		1,578 09
To amount of town grant,	3,200 00	
To overlayings on all the taxes,	94 90	
To highway deficiencies,	19 48	3,314 38
		$4,892 47
Cr. By amount of orders paid the Selectmen,	3,401 91	
By do. paid the overseers of the Poor,	600 68	4,002 59
Balance in the Treasury,		889 88
Town orders outstanding,		650 00
Net balance in favor of the town,		$239 88

All which is submitted.

} *Selectmen of*

S——, 18 .

Form of laying out a town way by Selectmen.

We the subscribers, Selectmen of the town of B. have laid out for the use of the said town a town way as follows; Beginning at a stake and stones on the northerly side of the road leading from J. P.'s to C. at land of D; then through said D.'s land north twenty-five degrees east, one hundred rods, to land of E.: then continuing the same course through land of said E. forty rods, until it intersects the road aforesaid, to be three rods wide, and to lie on the easterly side of said course. And we agreed with the owners of the land over which said way passes, for their damages, as follows;—to the said D. *forty dollars*, to be paid by the said town of B. before said road is opened: and the said E. released all the damages for laying said way through his land. And we allowed the several owners of the land aforesaid two months to take off the wood standing and growing thereon. Which said road is hereby reported to the town for their acceptance; and when accepted and recorded, is forever after to be known as a public town way.

Dated at B. this day of in the year 18 .

Selectmen of B.

SCHOOLS.

Form of an application to the Selectmen for a School District meeting, by three or more residents paying taxes.

To the Selectmen of the town of W.

The subscribers, residents, paying taxes in district No. 8, within said town, hereby make application to you to issue your warrant directed to one of the subscribers, requiring him to warn the qualified voters of said School District to meet at such convenient time and place as you may appoint, to act on the articles following:—

1. To choose a Moderator to preside in said meeting.
2. To choose a Clerk for said district.
3. To choose a prudential Committee-man for said district, pursuant to a vote of the town.
4. To see if the district will repair their school-house, and purchase necessary utensils for the same.
5. To vote such sums of money as may be thought sufficient for the foregoing purposes.
6. To prescribe the mode of warning future meetings of

said district and in what manner and by whom such meetings shall be called. W. B.

W. 18 . S. B.

J. G.

Warrant on the foregoing Application.

(L. S.) To S. B. one of the residents paying taxes

(L. S.) making the above application.

(L. S.) In the name of the Commonwealth of Massachusetts you are required to notify and warn the inhabitants of School District No. 8, in the town of W. qualified to vote in town affairs, to meet at their school-house in said town on the day of inst. at o'clock P. M. then and there to act on the articles, mentioned in the annexed application.

And you are hereby directed to serve this warrant by notifying personally, every inhabitant of said District qualified to vote in town affairs, or by leaving at his place of abode, a written or printed notification, expressing the time, place and purposes of said meeting, seven days at least before the time appointed for the same. Hereof fail not, and make return of this warrant with your doings thereon, to the said meeting, at the above time and place. And the Clerk who shall then and there be chosen and sworn, is directed to make a further return of the same to us at our Office

Given under our hands and seals this day of in the year .

P. M.
J. F.
F. W. P. } *Selectmen of W.*

Pursuant to the foregoing warrant, I have notified and warned the inhabitants of said school district to meet at the said time and place, and for the purposes mentioned in said warrant, by leaving at the place of abode of each of said inhabitants, a written notification expressing the time, place, and purposes of said meeting, seven days before the time appointed for the same. S. B.

Application to the Selectmen, when a majority of the district refuse to appropriate money for any of the purposes required of a school district; to be made by at least five residents paying taxes.

To the Selectmen of the town of H.

The school house in school district No. 8, in said town, requiring certain repairs, and being destitute of necessary

utensils, which said repairs and utensils would in our opinion amount to the sum of one hundred dollars: an estimate of which has been submitted to said district, at a legal meeting of the inhabitants thereof, with a request that they would vote a sum necessary for said purposes, when and where a motion to that effect, was negatived by a majority of said district: Wherefore the subscribers, being residents in said district, paying taxes, request that you would insert in the warrant for calling the next town meeting, an article requiring the opinion of the town, upon the expediency of making the appropriation for said purposes, and if in the opinion of the town, the same is expedient, we request that a sufficient sum be raised for those purposes, upon the polls and estates in said district.

H.—— 18 . A. B. C. D. E.

Application to the Selectmen, in case the District do not agree where to place their school house.

To the Selectmen of the town of W.

The subscribers have been appointed by School District No. 8 in said town, to oversee the building of a new school house for said district, and as said district have not agreed where to set said house, application is hereby made to the Selectmen to determine the spot.

W——, 18 . } Building Committee.

The above application may be made by five legal voters.

Forms of certificate for Instructors of Schools.

We certify that L. W. is qualified to instruct the highest public school required by law in this town, and he is hereby engaged to keep such school for the benefit of all the inhabitants of said town.

W , 18 . C. A. A. B. C. D. } School Committee of the town of W.

We certify that H. G. is qualified according to law, to instruct the town school in District No. 2, for the ensuing season.

By order of the School Committee of W .

W , 18 . C. A. Chairman.

We certify that Miss A. B. is qualified according to law,

to instruct the town school in district No. 5, the ensuing season.

By order of the School Committee of W .

C. C. B. Secretary.

W , April, 18 .

SURVEYORS OF HIGHWAYS.

Notification to a Person of his Highway Tax.

To A. B :—The amount of your taxes in the highway tax for the present year, committed to me by the Assessors of said town, is as follows :—

Poll,	0 55	
Real,	9 70	
Personal,	3 40	
Income,	2 ——	$15 65.

And you are hereby notified that I shall repair the road near the house of , on , at *o'clock*, when and where you may have opportunity to work out your highway tax, either in person or by substitute, with one pair of oxen or horses, a cart, a plough and other suitable tools.

B , 18 . E. B., Surveyor.

TOWN CLERK.

Warrant of Town Clerk, to notify Town officers to take the oath by law required.

To J. B. one of the Constables of the town of P.

[L. S.] GREETING.

The following is a list of those persons who were this day chosen into office, at a meeting of the inhabitants of said town, and of whom an oath is by law required, *viz.*

* * * * * *

You are hereby required, in the name of the Commonwealth of Massachusetts, within three days from the date hereof, to summon each of the said persons to appear before me, clerk of said town, within seven days from the time you shall give such notice, to take the oath by law prescribed to the offices unto which they are respectively chosen.

Hereof fail not, and make return of this warrant with your doings thereon, within seven days from the date hereof.

Given under my hand and seal, this day of in the year 18 . A. B., Town Clerk.

Blank forms of returns of marriages &c. are to be furnished to towns by the Secretary of the Commonwealth.

Publishment of Intentions of Marriage.

A. B. of P. and C. D. of F. intend marriage.
F———, 18 . J. F. Town Clerk.

Certificate of entering and publishing Intentions of Marriage.

I hereby certify, that an intention of Marriage between A. B. of W., and C. D. of said W. hath been entered with me fourteen days prior to the date hereof, and published in the town of W. as the law directs.

Given under my hand, this day of in the year 18 , } Clerk of said } Town of W.

Certificate of the Votes for County Treasurer.

At a legal meeting of the inhabitants of the town of P. qualified by the constitution to vote for Representatives, holden at said P. on the day of , in the year 18 , the said inhabitants gave in their votes for a county treasurer; and the same being counted and sorted in the meeting by the moderator thereof, and town clerk, it appeared that there were—for J. M. votes—for E. L. votes.

A true copy of record.
Attest, J. F., Clerk.

Certificate of the Votes for Register of Deeds

At a legal meeting of the inhabitants of the town of P. qualified by the constitution to vote for Representatives, holden at said P. on the day of , in the year 18 , the said inhabitants brought in their votes for Register of Deeds, and the same being counted and sorted by , who were chosen to count and sort the votes for that meeting, it appeared that the names of the persons voted for and the number of votes, were as follows, *viz.* for I. I. votes—E. F. —S. W.

A true copy of record.
Attest, J. F. Town Clerk.

For returns of votes for State Officers and County Commissioners, See forms for Selectmen.

Notice to the Clerk, of Money or Goods found of the value of one dollar and upwards.

On the day of , inst. I found [*here insert a discription of the articles, and the place where found,*] the owner whereof is to me unknown.

D. 18 . A. B.

Notification to be posted.

Found in the public highway in L. on the day of inst. [*here insert the articles, &c.*] the owner whereof is to me unknown. C. D.

D. 18 .

Warrant of a Town Clerk for ascertaining the damages done by Creatures taken up and impounded, (to be issued at the request of the owners of such creatures.)

To A. B. and C. D. of P. GREETING.

You are hereby appointed and empowered faithfully and impartially to estimate upon oath, the damage done to E. F. by [*here describe the creatures*] which for that cause have been taken up by G. H. and impounded in the town pound, [*or at whatever place they may be impounded.*]

Given under my hand, this day of A. D. 18 .

A. B. *Town Clerk.*

Warrant of a Town Clerk, for estimating the damages done by creatures taken up and impounded, (to be issued on the application of the person who impounded them.)

To A. B. and C. D. of P. GREETING.

You are hereby appointed and empowered faithfully and impartially to estimate upon oath, the damage done to E. F. by [*here describe the creatures*] which for that cause have been taken up and impounded by G. H. [*in such pound or in such place*] also the costs and expenses of impounding, with a reasonable compensation for your own services.

Given under my hand this day of 18 .

A. B. *Town Clerk.*

Warrant of a Town Clerk, appointing persons to appraise Lost Goods or Stray Beasts.

To A. B. and C. D. both of P. in the county of C.

(L. S.) GREETING.

You are hereby appointed and empowered to appraise upon oath, at the true value thereof in money, according

to your best judgment * * * * found [*and if it be a stray beast, add*, and taken up] by E. F. of , who has entered, posted, and cried the same, as the law directs.

And you are to make return of this warrant, and your doings thereon, into the town clerk's office of said P. within seven days from the date hereof. Given under my hand and seal the day of 18 .

J. F. Town Clerk of P.

APPENDIX NO. 2.

The following laws passed at the last session of the general court, were not received in season to be inserted in their appropriate places. Reference is made however, to such parts of the body of the work as have been affected by them. Permanency of laws is worth something. This perpetual tinkering of the statutes is at the best, of doubtful expediency.

TAX ON SALES BY AUCTION.

1. No sales, by auction, of ships, vessels, utensils of husbandry, horses, neat cattle, swine, sheep, or of articles of the growth, produce, or manufacture of the United States, except distilled spirits, shall be hereafter subject to any tax to the Commonwealth. *St. of* 1849, *c.* 138, § 1.

2. The tax upon all sales, by auction, of any goods, wares, merchandise, and effects imported from any place beyond the Cape of Good Hope, shall be one fourth of one per cent. on the amount thereof; and of all other goods, wares, merchandise, and effects, which are the production of any foreign country, one half of one per cent. on the amount thereof, instead of the tax now by law provided. *Ib.* § 2. *See page* 54 *to* 58.

TAXES.

TAXATION OF INCOME.

Income, from any profession, trade, or employment, shall not be construed to be personal estate, for the purposes of taxation, except such portion of said income as shall exceed the sum of six hundred dollars per annum; *provided, however*, that no income shall be taxed which is derived from any property, or estate, which is the subject of taxation. *St. of* 1849, *c.* 149.

SALE OF REAL ESTATE FOR TAXES.

1. No sale of any real estate, for taxes, shall affect the rights of any person not taxable therefor, provided that any mortgagee, upon taking possession of said real estate by force of his mortgage, shall be liable to pay all taxes then due, and the costs and expenses of any sale that shall have taken place. *St. of* 1849, *c.* 213, § 1.

2. In all cases of sales of real estate for the payment of taxes, the supreme judicial court shall have full equity powers. *Ib.* § 2.

ASSESSMENT OF TAXES.

It shall be the duty of the cashiers of the several banks, the treasurers of the several saving institutions, and the clerks of all insurance companies, in this Commonwealth, annually, between the first and tenth day of May, to make returns, in person or by mail, to the assessors of every city and town in this Commonwealth, in which any borrower of money, on the collateral security hereinafter mentioned, shall reside, in manner following, viz; The return shall state the number of shares of corporate stock, of any and all kinds, held by such corporation as collateral security for the debt or liability of each person residing in such city or town, on the first day of May, in that year, giving the name of such person, the number of shares, the denomination of such stock, and the par value thereof, if known to such officer making the return. *St. of* 1849, *c.* 110.

HEALTH.

1. All the powers vested in, and the duties prescribed to, boards of health of towns, by the general laws, shall be vested in, and prescribed to, city councils of cities, in case no special provision to the contrary is made in such laws themselves, or in the special laws applicable to any particular city. *St. of* 1849, *c.* 211, § 1.

2. The powers and duties above named, may be exercised and carried into effect by city councils, in any manner which they may prescribe, or through the agency of any persons to whom they may delegate the same, notwithstanding a personal exercise of the same, collectively or individually, is prescribed in the instance of towns, as

above referred to. And city councils are hereby authorized to constitute either branch, or any committee of their number, whether joint or separate, the board of health for all, or for particular purposes, within their own cities. *Ib.* § 2.

3. Whenever any nuisance, source of filth, or cause of sickness, shall be found on private property, within any city, the board of health, or health officer, shall order the owner, or occupant thereof, to remove the same, at his own expense, within twenty-four hours, or such other time as they shall deem reasonable, after notice served, as provided in the succeeding section; and if the owner, or occupant, shall neglect so to do, he shall forfeit a sum not exceeding twenty dollars, for every day during which he shall knowingly permit such nuisance or cause of sickness to remain after the time prescribed, as aforesaid, for the removal thereof. *Ib.* § 3.

4. The order mentioned in the last section shall be communicated by a written notice, served personally upon the owner or occupant, or their authorized agent, by any person competent to serve a notice in a civil suit; or such notice may be left at the owner, occupant or agent's last and usual place of abode, if the same be known, and is within the State; and if the owner or agent's residence is unknown, or without the State, the premises being unoccupied, then such notice may be served by posting up the same on the premises, and by advertising in one or more public newspapers, in such manner, and for such length of time, as the board of health, or health officer, shall deem expedient. *Ib.* § 4.

5. If the owner or occupant shall not comply with the order above mentioned, the board of health may cause the said nuisance, source of filth, or cause of sickness, to be removed, and all expenses, incurred thereby, shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same, if said owner or occupant, or such other person, shall have had actual notice from the board of health of the existence of said nuisance, source of filth, or cause of sickness. *Ib.* § 5.

6. All expenses incurred by any town or city in the removal of nuisances, or for the preservation of the public health, and which are recoverable of any private person or

corporation by virtue of any provisions of law, may be sued for and recovered in action of debt, before any court, having jurisdiction of the amount damaged. *Ib.* § 6

7. All fines and forfeitures incurred under the general laws, or the special acts, applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city relating to health, shall enure to the use of such town or city, and may be recovered by complaint, in the name of the treasurer, before any justice of the peace of the county, or police court of the city, in which the offence may have been committed. *Ib.* § 7.

8. The provisions of the tenth, eleventh, and forty-fifth sections of the title "Board of health," and so much of the act of one thousand eight hundred and sixteen, chapter forty-four, relating to the board of health of the town of Boston, as is inconsistent with the foregoing provisions, are hereby repealed, saving all proceedings and causes of proceeding and forfeitures incurred under and by virtue of such repealed acts. *Ib.* § 8.

POOR.

SETTLEMENT OF CERTAIN PAUPER ACCOUNTS.

1. All accounts against the Commonwealth for allowance to cities and towns for support of state paupers sick with an infectious disease, dangerous to the public health, shall be so made out as to include all claims for such support up to the first day of November, annually; and shall be rendered to the secretary of the Commonwealth, on or before the third Wednesday of said November. *St. of* 1849, *c.* 151, § 1.

2. All accounts against the Commonwealth, for allowance for the support of lunatic state paupers, shall be so made out as to include all claims for such support up to the first day of December, annually, and shall be rendered to the secretary of the Commonwealth, on or before the third Wednesday of said December. *Ib.* § 2.

3. No account for the support of any state pauper shall be allowed by the auditor of accounts, unless the same shall be rendered within the time specified by law. *Ib.* § 3.

4. It shall be the duty of the secretary of the Commonwealth to transmit all claims against the Commonwealth,

rendered to his office, to the auditor of accounts. *Ib.* § 4. *See title "Support of Paupers,"* § 37.

PENALTY FOR LEAVING POOR PERSONS IN TOWNS NOT THEIR PLACES OF SETTLEMENT.

The penalty stated in the 33d section of title *Support of Paupers*, for bringing into and leaving any poor and indigent person in any town of this State, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his support, shall be forfeited to the use of, and may be sued for and recovered by, the town intended to be so charged. *St. of* 1849, *c.* 66.

SCHOOLS.

DISTRIBUTION, CUSTODY, AND PRESERVATION OF SCHOOL RETURNS, AND OTHER DOCUMENTS AND PAPERS RELATING TO SCHOOLS.

1. It shall be the duty of the secretary of the board of education to cause the blank forms of inquiry, the school registers, the abstract of school returns, and the annual report of the board of education, and that of its secretary, to be forwarded to the sheriffs of the several counties, for distribution to the clerks of the several towns and cities within their counties respectively; and it shall be the duty of the sheriff so to distribute them; and he shall be entitled to receive three cents a copy for each copy of said several documents so distributed, to be paid by the treasurer of the Commonwealth. *St. of* 1849, *c.* 65, § 1.

2. It shall be the duty of the clerk of each of the several cities or towns to deliver the blank forms of inquiry, and the registers, when the same shall be received by him, to the school committee; it shall also be his duty to deliver one copy of the said abstract and reports to the secretary of the school committee of the city or town, to be by him carefully kept for the use of the said committee, and handed over to his successor in office; and also two additional copies of said reports, for the use of said committee;—and further, it shall be the duty of the clerks of the several cities or towns to deliver one copy of the said reports to the clerk of each of the school districts in the respective cities or towns, to be by him deposited in the

district school library, if there be one; and if not, to be by him carefully kept for the use of the prudential committee, the teachers, and the inhabitants of the district, during his continuance in office, and then to be handed over to his successor; and, in case the city or town shall not be districted, the said reports shall be delivered to the school committee, and so placed by them that they shall be accessible to the several teachers, and to the citizens; and they shall be deemed to be the property of the town or city, and not of any officer, teacher or citizen thereof. *Ib.* § 2.

3. The one hundredth chapter of the acts, passed in the year one thousand eight hundred and forty-five, is hereby repealed. *Ib.* § 3.

SCHOOL COMMITTEES.

Whenever, in consequence of vacancies occurring in the school committee of any city or town in this Commonwealth, after the date of the warrant for the annual town meeting for the election of their successors, or the inability, arising after the said date, of any of the members of said committee to act, such committee shall be reduced to a minority of its original number, the remaining members of said committee shall be competent to make the returns required to be made and transmitted to the office of the Secretary of the Commonwealth; and such returns shall be accompanied by a certificate of the person or persons so making them, setting forth the existence of such vacancies or disabilities, and the time when the same arose. *St. of* 1849, *c.* 144.

SCHOOL LIBRARIES AND SCHOOL APPARATUS.

1. The inhabitants of any school district, in any city or town, and of any city or town not divided into school districts in this Commonwealth, may, at any meeting called for that purpose, raise money for the purchase of libraries, and necessary school apparatus, in the same manner as school districts may now raise money for erecting and repairing schoolhouses in their respective districts.

The provisions of section 16, of the title "*School districts*" are repealed. *St. of* 1849, *c.* 81.

SCHOOL COMMITTEES, AND THE DISTRIBUTION OF THE INCOME OF THE SCHOOL FUND.

1. The school committees of the several cities and towns, instead of ascertaining the number of persons between the ages of four and sixteen years, belonging to such cities and towns respectively, shall ascertain the number of persons between the ages of five and fifteen years, and shall alter the form of the certificates required from them, accordingly. *St. of* 1849, *c.* 117.

SCHOOL DISTRICTS.

No town shall be districted anew, for school purposes, so as to change the taxation of lands of proprietors into districts, using different schoolhouses, oftener than once in ten years. *St. of* 1849, *c.* 206.

2. The income of the Massachusetts School Fund shall hereafter be apportioned to the several cities and towns according to the number of persons therein between the ages of five and fifteen, instead of four and sixteen. *Ib.*

3. The sum required to be raised by any city or town, as one of the conditions of receiving its portion of the income of the School Fund, shall be, at least, equal to one dollar and fifty cents, instead of one dollar and twenty-five cents, for each person between the ages of five and fifteen years, belonging to said city or town.

4. Nothing in this act contained shall be considered as prohibiting the attendance upon the schools of scholars under five or over fifteen years of age. *Ib.*

SCHOOL REGISTERS.

1. Instead of the school registers, in book form, now transmitted to school committees, the Secretary of the Board of Education is hereby required to transmit registers in such form as the said board shall prescribe; and no school teacher shall be entitled to receive payment for his or her services, until the register of his or her school, properly filled up and completed, shall be deposited with the school committee, or with such person as they may designate to receive it. *St. of* 1849, *c.* 209.

The provisions of section 11, of the title "*School Committee*" are repealed. *Ib.*

EMPLOYMENT OF CHILDREN IN MANUFACTURING ESTABLISHMENTS.

1. The meaning of the first section of the act passed on the sixteenth day of April, in the year one thousand eight hundred and thirty-six, entitled "an act to provide for the better instruction of youth employed in manufacturing establishments," is hereby declared to be, that no child, under the age of fifteen years, shall be employed in any manufacturing establishment, unless such child shall have attended some public or private day-school, where instruction is given by a teacher, qualified according to the first section of the twenty-third chapter of the Revised Statutes, at least one term of eleven weeks, of the twelve months next preceding the time of such employment, and for the same period during any and every twelve months in which such child shall be so employed; but the provisions of this act, and of the act above-named, shall not apply to any child who shall have removed into this Commonwealth from any other state or country, until such child shall have resided six months within this Commonwealth. *St. of* 1849, *c.* 220, § 1.

2. The provisions of sections 16 & 17, of the title "*School Committee*" are repealed. *Ib.* § 2.

3. The owner, agent, or superintendent of any manufacturing establishment, who shall employ any child in such establishment, contrary to the provisions of this act, shall forfeit a sum not exceeding fifty dollars for each offence, to be recovered by indictment, to the use of common schools in the towns respectively, where said establishment may be situated. *Ib.* § 3.

SELECTMEN, DUTIES OF, CONCERNING PUBLIC AMUSEMENTS.

1. The mayor and aldermen of any city, or the selectmen of any town, may license all theatrical exhibitions, public shows, public amusements, and exhibitions of every description, to which admission is obtained upon payment of money, or the delivery of any valuable thing, or by any ticket, or voucher obtained for money, or any valuable thing, upon such terms and conditions as they shall think reasonable; and they may revoke or suspend the same

whenever there shall appear to them to be sufficient cause for such revocation or suspension. *St. of* 1849, *c.* 231, § 1.

2. Any person who shall offer to view, or shall set up, set on foot, maintain or carry on, or shall publish, or otherwise assist in or promote any such exhibition, show, or amusement, as mentioned in the preceding section, without a license as therein specified, shall be punished by a fine not exceeding five hundred dollars for each offence. *Ib.* § 2.

3. Any person who shall get up and set on foot, or cause to be published, or otherwise aid in getting up and promoting any masked ball, or other public assembly, at which the company wear masks, or other disguises, and to which admission is obtained upon payment of money, or the delivery of any valuable thing, or by any ticket or voucher obtained for money, or any valuable thing, shall be punished by a fine not exceeding five hundred dollars; and, for a repetition of the offence, by imprisonment in the common jail, or house of correction, not exceeding one year. *Ib.* § 3.

SALE OF ANTHRACITE COAL.

1. All anthracite, hard or mineral coal, when sold in greater quantities than five hundred pounds, except the cargo, shall be sold by weight, and two thousand pounds avoirdupois shall be the standard for the ton, by which the same shall be sold and weighed. *St. of* 1849, *c.* 143, § 1.

2. Before any such coal, so sold, shall be delivered to the buyer, it shall be the duty of the owner thereof to cause the same to be weighed by a sworn weigher, of the town or city in which the same shall be sold and delivered, and a certificate of the weight thereof, signed by the weigher, shall be delivered to the buyer at the time of the delivery of such coal. *Ib.* § 2.

3. Any person who shall offend against the provisions of this act, shall, for each offence, forfeit the sum of five dollars to the use of the town or city where the offence shall be committed. *Ib.* § 3.

4. The mayor and aldermen of any city, and the selectmen of any town, are hereby authorized and required to appoint one or more person or persons, to be weighers of such coal, who shall be sworn to the faithful discharge of

their duties, and shall be entitled to such fees as the mayor and aldermen, and selectmen, shall determine, which shall be paid by the seller. *Ib.* § 4.

SIDEWALKS IN TOWNS.

1. It shall be lawful for any person owning or occupying lands adjoining a highway or road, to construct a sidewalk within such highway or road, and along the line of such land, indicating the width of such sidewalk by trees, posts or curbstones, set at reasonable distances apart, or by a railing erected thereto; and where a sidewalk shall be so constructed, every person who shall ride, or drive a horse or team upon and along the same, shall forfeit the sum of one dollar to the use of such owner or occupant, to be sued for in any court proper to try the same. *St. of* 1849, *c.* 24, § 1.

2. This act shall not diminish or interfere with the authority of surveyors of highways, or any other authority that can be now legally exercised over highway or roads; nor shall it in any manner diminish the liability of any person for unreasonably obstructing highways or roads. *Ib.* § 2.

3. This act shall not apply to cities. *Ib.* § 3.

MILITIA.

1. Each and every officer and member of the volunteer companies shall receive compensation for the military duty performed by them, as follows, viz :—

For the May inspection, the sum of one dollar and fifty cents, and, for each day's duty in camp, the sum of two dollars and fifty cents per day; the said sums to be computed upon the pay roll of each company, to be made out and certified by the commanding officers of companies, as is now by law provided, and to be returned to the adjutant general's office, within ten days after the last day's duty, and by him examined and certified, and returned to the mayor and aldermen, or the selectmen of the several towns and cities, who shall, upon receipt thereof, pay over to the persons named therein the sums specified. And the pay rolls shall be returned, by the mayor and aldermen, or selectmen of the towns and cities, to the adjutant general's

office, on or before the thirty-first day of December, annually, to be by him presented, for allowance, to the governor, as now by law provided, for the reimbursement of the same, from the state treasury. *St. of* 1849, *c.* 217, § 7. *See page* 276.

TOWN CLERK.

REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

1. Town and city clerks are hereby authorized and required to obtain, record, and index, the information concerning births, marriages, and deaths, now required by law. Towns and cities, containing more than ten thousand inhabitants, may choose a person, other than the town or city clerk, to be town or city registrar, to perform this duty, instead of the town or city clerk; and said registrar shall take an oath, faithfully to perform the duties of the office. *St. of* 1849, *c.* 202, § 1.

2. The fees of the clerk and registrar, for obtaining, recording, and indexing, the information required by this act, shall be as follows:—For each birth, twenty cents; for each intention of marriage, including the certificate to the parties, fifty cents; for each marriage solemnized, ten cents; for each death, five cents; and the undertaker shall be allowed ten cents for information concerning each death which he returns to the clerk or registrar; said fees for births, deaths, and marriages solemnized, shall be paid by the town; and for intentions of marriage by the parties having such intentions; *provided, however*, that the aggregate compensation, allowed to any clerk or registrar, may be limited by any town or city, containing over ten thousand inhabitants, but in no case so as to prevent the full execution of this act. *Ib.* § 2.

3. Any undertaker, or other person having the superintendence of the burial of any deceased person, who shall neglect or refuse to obtain and return the information required by this act, concerning each person deceased, whose burial shall come under his superintendence, shall be liable to a penalty not exceeding twenty dollars for each neglect, and, if an undertaker, to be deprived of his office. And every clerk or registrar, who wilfully neglects or refuses to perform the duties herein prescribed, shall be

liable to a penalty of not less than twenty, nor more than one hundred dollars, for each neglect or refusal. All penalties and forfeitures, under this act, may be recovered by any person who shall sue for the same, one half thereof to the use of said complainant, and the other half to the use of the town or city in which the forfeiture shall have been incurred.

4. The returns required to be made on the first day of February, in the year one thousand eight hundred and fifty, shall include the births, deaths and marriages, from the first day of May, in the year one thousand eight hundred and forty-eight, to said day of return. *Ib.* § 4.

5. Copies of records, in the several towns and cities, of the births, marriages, and deaths, which occurred during the next preceding year, ending December thirty-first, shall be returned to the Secretary of State, annually, on or before the first day of February. The blank forms of said returns shall be printed on paper of uniform size; and those for each year, when filled out and returned to the office of the Secretary of State, shall be bound together, in one or more volumes, and shall be furnished with an index. Blank books for indexes to the town registrars, shall be prepared by the Secretary of State, and furnished to the several towns and cities at the expense of the Commonwealth.

6. All parts of acts inconsistent with the provisions of this act are hereby repealed. *Ib.* § 6.

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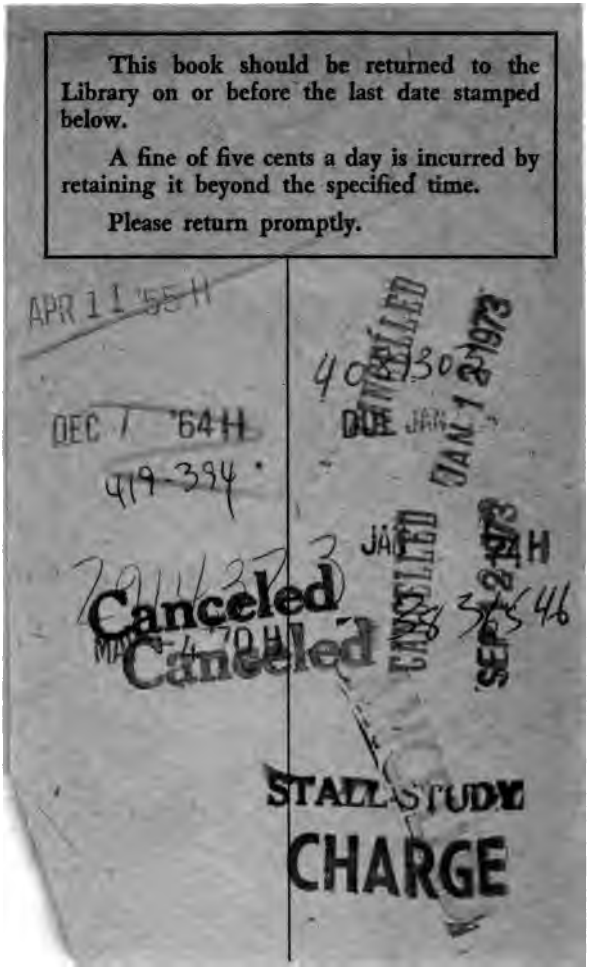

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